

Auditor of State
Response to Not For Profit Questions
June 4, 2021

Email
Date

Question

Proposed Answers

4/12/2021 We donate to the Historical Society annually. Also we donate to the Family Crisis Center and Centers Against Abuse & Sexual Assault. What documentation do you require for us to continue to support these organizations?? Or do they not need special documentation, since they provide services which are utilized by the County Attorney and the Sheriff's Department.

The Constitution of the State of Iowa prohibits governmental bodies from making a gift to a private non-profit corporation. Article III, Section 31 of the Iowa Constitution states, in part, "...no public money or property shall be appropriated for local, or private purposes..."

At least six official Attorney General Opinions since 1972 have consistently concluded that "a governmental body may not donate public funds to a private entity, even if the entity is established for charitable or educational purposes and performs work which the government could perform directly." The Opinions further conclude, "Even if the function of a private non-profit corporation fits within the scope of activities generally recognized as serving a public purpose, a critical question exists regarding whether funds or property transferred to a private entity will indeed be used for those public purposes."

Chapter 331.427(3) of the Code of Iowa specifically allows a county to appropriate funds from the General Fund for "the use of a nonprofit historical society organized under chapter 504, Code 1989, or current chapter 504, a city-owned historical project, or both."

Any donation to a NFP not specifically allowed by Iowa Code or a grant agreement is prohibited - there is no documentation that would make it okay.

4/12/2021 The Auditor of State also provided us with the attached sample audit remark regarding donations to non-profits. It calls for "reimbursement of current and past donations" along with stopping future donations. Under the circumstances, are we justified in not seeking those reimbursements? If we must seek reimbursement, how far back are we supposed to go? Many of us have supported particular non-profits for a long time, and then there are other non-profits that we no longer support but which received donations in the past.

Reimbursement is not realistic. The NFP accepted the donation in good faith and it could create a hardship on the NFP to reimburse any amount of prior funding. Moving forward, counties should cease all donations to NFPs.

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4/12/2021	The AOS letter paraphrased a 2008 Attorney General's Opinion as follows: "Agreements properly established under Chapter 28E of the Code of Iowa establish safeguards to protect the interest of the public..." If a county has an agreement with a non-profit to provide social services, for instance, does it have to be a 28E agreement specifically?	An agreement with a non-profit to provide social services is a contracted service. This is no different than a County contracting with a for-profit vendor for services. A county may pay a NFP for services upon receipt of a verified invoice detailing those services and their cost. 28E agreements are for something you might think of as a joint venture or joint project where the parties will share in decision making on all aspects of the work, or a new organization.
4/12/2021	Is sufficient day care an economic development tool to attract businesses to the community? And, is early childhood education and a safe and secure family environment a tool to ensure a robust future workforce?	Chapter 15A.1 (1)(a) of the Code of Iowa establishes economic development as "a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives, and other financial assistance to or for the benefit of private persons." Chapter 15A.1(1)(b) of the Code of Iowa defines "economic development" for purposes of this Chapter as "private or joint public and private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost."
4/12/2021	Can the VA donate money annually for food and personal items to a local food bank/thrift/donation organization? We have a Supervisor who sits on their board.	The Board must document how donations to a day care and/or whether or not early childhood education and a safe and secure family environment meet the Chapter 15A of the COI definition of economic development. If the Board is unclear, they should consult the County Attorney prior to any expenditure. It depends on the source of the funds donated. If the source is donations from citizens for such purposes, the VA would be required to use the funds as such (i.e., in accordance with the purpose of the donations). If the source of the funds to be donated are the County's General Fund, the donations must follow the same rules as all other donations to a private NFP - i.e., meet the definition of economic development.
4/13/2021	Can social services make a payment to a nutrition program for a senior citizens organization that provides daily meals? We have a supervisor who sits on that board	If the NFP provides a service the County otherwise could provide, and the County enters into a contract with the NFP to provide those services, i.e., provide x number of meals within x timeframe, the County could pay the NFP for that service. Recommended method would be to reimburse the NFP based on an invoice which documents the meals served.
4/13/2021	In general, if a supervisor sits on the board, can payment be made to the organization?	Whether or not a Supervisor sits on a Board is not a criteria for use of public funds. Furthermore, if the governmental entity enters into a contract with the NFP, the Supervisor should not participate due to conflict of interest.

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4/14/2021

What about the conflict between the American Rescue Plan suggesting that we give to Non-profits?

If the ARP allows payments to NFP, then this would be an allowable use of those funds as long as what the NFP will use it for also meets ARP requirements. Having said that, a county should not just give the funds away, they should have a written agreement that accompanies the funds that requires the NFP to report to the County how those funds were used to accomplish an allowable purpose. Reporting could be monthly or quarterly.