

FINANCIAL SUPPORT FROM STATE AND LOCAL GOVERNMENTS

In the last month I have had two questions concerning financial transactions of museums with local governments and the effect of Section 7 of Article 8 of the State Constitution.

Section 7 provides:

“Section 7 Credit Not To Be Loaned.

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm or become directly or indirectly the owner of any stock or bonds of any association, company or corporation.”

Likewise Section 5 of Article 8 provides that:

“Section 5 Credit Not To Be Loaned

The credit of the state shall not, in any manner be given or loaned to, or in aid of, any corporation.”

Despite the difference in wording, these two provisions are similarly construed by the State Supreme Court.¹

These provisions were added to the state Constitution in 1889. At the time the primary concern was the wasteful use of public money to subsidize private railway companies (often to the benefit of influential individuals). Despite the apparent narrow intention of these sections they have been interpreted to preclude any public funds being used to support cultural activities unless the state or municipality received consideration in return.

The first case involves a specialty museum owned by a non profit corporation qualified to receive tax deductible contributions under section 501(c)(3) of the Internal Revenue Code. The museum is housed in an historic building which is owned by the City and is rented to the museum. The building is in need of substantial repairs. The museum desires to purchase the building and has made a substantial offer consisting of the payment of \$25,000 in cash and taking the responsibility for making \$275,000 in repairs. Two people in town have opposed the transaction arguing that it is violation of Section 7 Article 8 and have threatened to sue the city if the Council votes to go through with the deal.

The second case involves a museum that intends to purchase a property with a view for a new museum building. The City desires an easement for a public walkway across the property which would permit public access to the view. Does payment by the City for the easement violate Section 7 of Article 8? The answer in both cases is no.

The State Supreme Court uses a two-part test to determine if an unconstitutional gift is made. Under the first part, if the government expends funds to carry out a fundamental government purpose there is no unconstitutional gift.² Even if an expenditure fails the part of the test it still may be constitutional if it meets the second part of the test. There will have been no unconstitutional gift if (1) there was no donative intent on the part of the governing

¹ Health Care Facilities v Ray 93 Wn.2d 108 at 115 (1980), (overruled on other grounds)

In re Marriage of Johnson, 96 Wn. 2d 255 at 265 (1981)

² Citizens for Clean Air v. Spokane, 114 Wn 2d 20 at page 39 (1990)

body and (2) there was adequate consideration.³ Courts will only go into the sufficiency of the consideration if it appears to be grossly inadequate. If it were otherwise the court would intrude upon the governing bodies power to make their own legislation.⁴

Other cases further show the deferential attitude toward the spending decisions of governments under Section 7 Article 8. In Cascade Brigade v. Economic Development Board, 61 Wn App. 615, at 618-21 (1991) the Court held there was no arguable question that the County received adequate consideration and had no donative intent in providing funds to an organization which had been created to promote economic growth. An interesting sidelight in this case was that an attorney representing clients who had filed the suit against the Tacoma Economic Development Board (a private non profit corporation) asserting that the Board received funds from the County in violation of Section 7 of Article 8 was forced to pay \$10,966 in Rule 11⁵.

In the first case it appears to me that the \$25,000 to paid for a building (that is need of approximately \$275,000 in repairs) is sufficient consideration (even though it may not be the “fair market value”), and its sale by the City would not be in violation of Section 7 of Article 8.

The second case is even clearer. The purchase by the City of an easement across the museum’s property is sufficient consideration to satisfy the requirements of Section 7, Article 8 unless the amount paid by the City is so large that the value of the easement could be found to be a mere token payment.

Consideration, however, must not be something the non profit organization would do anyway. For example a performing arts group plans to put on a performance in the City or a museum plans a special exhibit about an event of local significance. Both these events would benefit the City. However, since the performance or the exhibit would take place anyway any contribution by the City would be unconstitutional. To be sufficient consideration, the arts group or the museum would have to do something they would not otherwise do, for example, a special performance for school children or admission to the exhibit by seniors or by school children free of charge.

There are two statutes in Washington which would seem to indicate that the intent of the legislature is that support of arts organizations and historical museums is a fundamental public purpose which should satisfy the first part of the test applied by the Supreme Court in the Tacoma case above.

RCW 27.48.010

“The storage, preservation and exhibit of historical materials, including, but not restricted to, books, maps, writings, newspapers, ancient articles, and tools or handicrafts, antiques, artifacts, and relics is declared to be a public project to be carried on for public purpose and the legislative body of any county, city or town, may provide quarters therefore within the territorial limits thereof and may provide funds necessary for the proper operation of any such institution already in operation, or otherwise provide funds for the preservation of historical material covered by this chapter.”

(Underscore supplied)

RCW 43.46.005

“The conservation and development of the state’s artistic resources is essential to the social, educational, and economic growth of the state of Washington. Artists, works of art, and artistic

³ Tacoma v. Taxpayers, 108 Wn 2nd 679 at 702-03

⁴ Tacoma v. Taxpayers, 108 Wn 2nd at 703.

⁵ Rule 11 of the Civil Rules of the Superior Court states that by signing any pleading, motion, or legal memorandum the attorney is certifying that it is “well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law...”.

institutions contribute to the quality of life and general welfare of the citizens of the state and are appropriate matter of concern to the government of the state of Washington.”

While these two statutes justify towns and cities, and the State engaging directly in historic and artistic activities they have not been used by the Courts to justify direct contributions by towns, cities, or the State to private organizations engaged in artistic, historical and cultural activities.

The bottom line is that if towns, cities or the state are to support non governmental arts, cultural, or historic organizations they must get sufficient consideration in return.

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