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ADVISORY ON PUBLIC FUNDS GOING TO PRIVATE NON-PROFITS

May 2020

The Office of Auditor of State has received questions regarding public entities providing donations to private non-profits to help with community needs such as food, housing and utilities. This communication is to remind elected officials that the Iowa Constitution prohibits such donations, and inform them of proper methods of supporting pandemic relief efforts.

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…"

An official Iowa Attorney General Opinion from 2008 states, in part, "Past opinions of this office 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 Opinion further states, "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."

While donations to a private entity are not allowable, there are acceptable routes for a public entity to contemplate a long-term public/private relationship. A public entity could enter into an agreement for joint or cooperative action with the private entity under Chapter 28E of the Code of Iowa. Agreements properly established under Chapter 28E of the Code of Iowa establish safeguards to protect the interest of the public which the aforementioned donation does not provide. Generally speaking, any sort of allowable agreements would be better described as contracts with obligations upon and benefits to both parties as a public entity may have with a for-profit company, rather than donations or contributions.

While a governmental body cannot donate or make a contribution of public funds to a private non-profit organization, local governments are not prohibited from expending public funds to encourage the public to *generally* support nonprofits, such as purchasing advertisements that state the same, or to patronize local businesses in ways that comply with section 15A.1 of the Code of Iowa as a method of retaining jobs. Proper procedures to document compliance include advance public notice, the public purpose served by the expenditure(s) should be recorded prior to expenditure(s) being made, the communication should not show favoritism to particular businesses or nonprofits, and conflicts of interest should be avoided.