

TO: Greenburgh Town Supervisor
Greenburgh Town Clerk

CC: Greenburgh Town Council

OPINION 2014-1

Background

This Advisory Opinion addresses an email received from Town Supervisor Paul Feiner dated December 22, 2013 regarding the solicitation of realtors and businesses to act as sponsors to offset the costs of creating neighborhood videos. The Town will be creating a number of You Tube videos highlighting each different neighborhood in town. The different You Tube segments will also highlight different programs/services (recreation, trails, shopping, etc...). The Town will create a new website with a map of Greenburgh. Visitors to the website will be able to click on neighborhoods in which they are interested and watch the best that the neighborhood has to offer. The names of the sponsors would be at the end of each video thanking them for their sponsorship. The sponsorship will cover some of the costs of producing the video: p/t coordinator, web designer, video production. Sponsors would be asked to make checks payable to the Town of Greenburgh with the funds placed in a separate trust and agency account.

New York State Laws

NYS law (Section 806(1) (a) of Article 18 of the NYS General Municipal Law) states that local municipal codes of ethics "may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited." Thus, a town in the State of New York may exceed the ethical standards provided under NYS law but a town may not diminish those standards.

NYS law (Section 64(8) of the NYS Town Law: There is no authority for a town or any of its departments or agencies to either solicit funds for use in town programs or participate in fund-raising activities for such programs. A town may, however, accept gifts solicited by a private civic-group.

NYS law (Section 64(8) of the NYS Town Law) permits a town board, subject to law, to accept gifts on behalf of a town: "Subject to law and the provisions of this chapter, the town board of every town . . . 8. [m]ay take by gift . . . real and personal property . . . for any public use, upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said town"

There is authority for the proposition that "the term 'gifts' [in NYS ethical statutes] was intended to be read broadly." NY Attorney General Informal Opinion 2005-10 (April 12, 2005).

Town of Greenburgh Laws

Greenburgh's Code of Ethics Section 4A (2) prohibits any public officer from directly or indirectly soliciting or accepting any gift under circumstances where there could be a reasonable inference of influence or reward.

Section 4A (1) of the Code of Ethics sets forth a number of *per se* "prohibited acts". Subsection (a) prohibits gifts to be solicited or accepted on Town property, but exempts from this *per se* prohibition gifts for and on behalf of the Town. This exemption would permit, for example, the Town Board to accept a gift on Town property pursuant to its authority under Town Law Section 64(8).

NYS Ethical Rulings

There have been several NYS ethical rulings on this subject. The most recent ruling that we have identified is from the Tug Hill Commission Report of February 2001. It references several NYS Comptroller's Opinions dating to the 1970's including one opinion issued to the Greenburgh Town Attorney. We were advised that these referenced opinions may no longer represent the views expressed in them if, among other things, there have been subsequent court cases or statutory amendments that bear on them. After research, we have not identified any such court cases or statutory amendments which would change the opinions expressed in them relative to solicitation.

Municipalities May Not Solicit Gifts or Conduct Fundraising Activities

There is no authority for a municipality to solicit monetary or material gifts, either by advertisement or otherwise. Nor may they conduct fundraising activities. According to Office of the State Comptroller opinions No. 74-1102, 1974, and No. 77-292, 1977, such activity would be contrary to public policy and, therefore, not a proper municipal function. This issue is also addressed in State Comptroller's Opinion #78-256 in the *Appendix*. This prohibition does not forbid the pursuit of funding from established grant programs, which is a legitimate municipal function.

Absent express statutory authority, municipalities generally may not undertake fund-raising activities, including the solicitation of gifts. Fund-raising activities undertaken to benefit a municipality should be directed and administered by individuals in their private capacities or by community groups not affiliated with the municipality. In turn, these private individuals or groups may make donations to the municipality. Municipalities are generally authorized to accept gifts of real and personal property to be used for proper municipal purposes. Gifts generally may be accepted on the condition that they be used for a specified municipal purpose so long as the condition does not require the local officials to surrender or renounce their powers and duties. Once accepted by the appropriate municipal official or body (usually the governing board), monies generally must be transmitted to the chief fiscal officer. These funds constitute municipal monies and, accordingly, expenditure of these monies is generally subject to the same statutory requirements (e.g. budgetary appropriation, audit of claims, competitive bidding) as other municipal revenues.

-from Office of State Comptroller workshop handout, 3/29/00

This limitation on municipal fundraising also applies to various town and village committees (recreation, historical, bicentennial, community improvement, etc.). While municipal boards have the power to create such committees, they cannot give these committees more power than the board itself has. Since a municipality cannot solicit funds, neither can it authorize its committees to solicit funds.

Examples

- A town appointed committee is charged with planning the town's bicentennial celebration. This committee sets up a bank account into which it begins to deposit monies raised from bake sales and other activities conducted to raise funds for the celebration. There are two problems with this example. First, the committee may not solicit contributions or conduct fundraising activities as a municipal entity. Secondly, municipally-appointed committees may not hold funds in separate accounts outside of the appointing municipality's control.
- A village asks its recreation committee to work with a landscape architect that the village has hired to plan improvements to the village park. Local citizens form their own ad hoc group to raise funds for a new playground at the park. This group then donates monies raised to the village on the condition that these funds be put toward new playground equipment (or the group may purchase the equipment and donate it to the village). This is an acceptable scenario, as the village had no role in forming the volunteer group and is not directly connected with the fundraising

activities. Some members of the village recreation committee may even choose to participate in these fundraising activities in their role as private citizens. However, the State Comptroller's office advises elected officials to not participate in fundraising activities for municipal projects, even as a private citizen, to avoid the perception of anything improper.

Opinion

It is the opinion of the Board of Ethics that the town has no authority to solicit private funds through sponsorships or otherwise to defray the costs of the neighborhood videos. Therefore, the Town may not solicit realtors or businesses to provide funds to sponsor the aforementioned videos.

Concluding Matters

The above opinion is broad in scope and is applicable to other situations involving solicitation by the Town including, but not limited to, the solicitation of food for town events. However, should a local private civic group, for example, rather than the town itself or any of the town's departments or agencies, sponsor fund-raising activities or solicit donations for use by the town, contributions made to the town by such groups of moneys it collected could be accepted by the town as a gift.

In light of the fact that the Comptroller's opinions date to the 1970's, the Town Board may wish to pose their question to the New York State Comptroller's office for an advisory opinion. The Board of Ethics is basing its opinion on those rulings and the report cited herein. If the Town does decide to seek an opinion from New York State, the Town should comply with this Board of Ethics opinion and previous New York State opinions until a response is received from New York State.

Given the broad scope of this opinion, the current Greenburgh Code of Ethics should be modified to bring it into compliance with New York State law as expressed in the referenced New York State Comptroller's Opinions and the Tug Hill Report.

BY THE BOARD OF ETHICS

Adopted at January 28, 2014 Meeting

Voting for:

Dr. Hopkins, PhD

Mr. McLaughlin

Mr. Scott

Not Present:

Mr. Eisen

Enclosures

Municipal Fundraising And Gifting

February 2001

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TUG HILL COMMISSION

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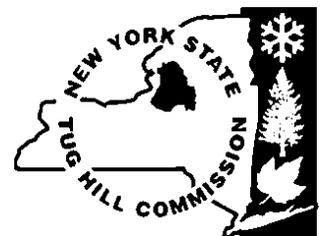


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SPECIAL THANKS

We thank the New York State Conference of Mayors and Municipal Officials (NYCOM) and the New York State Office of the State Comptroller for providing the bulk of material compiled in this paper.

The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.

Introduction

This paper addresses two separate, but related issues—municipal fundraising and municipal gifting. The first section focuses on municipal fundraising and whether a municipality or its officials has the authority to solicit charitable donations or to conduct fundraising activities for municipal projects. The second section addresses the more complex topic of municipal gifting (municipal payments or contributions to private individuals, organizations, or associations). What makes gifting the more complex issue is that despite the prohibition against municipal gifting, there are several exceptions. The material in this section is adapted from an out-of-print publication by the New York Conference of Mayors and summarizes how to properly expend municipal funds to other entities in furtherance of a public purpose. The appendix to this paper includes several State Comptroller Opinions that demonstrate the application of the following guidelines.

Municipal Fundraising

Faced with the reality of limited local resources and stiff competition for available funding programs, local fundraising efforts play a key role in the completion of an untold number of community projects. At issue is the proper role of municipalities, their officials, and/or special committees in such fundraising efforts.

Municipalities May Not Solicit Gifts or Conduct Fundraising Activities

There is no authority for a municipality to solicit monetary or material gifts, either by advertisement or otherwise. Nor may they conduct fundraising activities. According to Office of the State Comptroller opinions No. 74-1102, 1974, and No. 77-292, 1977, such activity would be contrary to public policy and, therefore, not a proper municipal function. This issue is also addressed in State Comptroller's Opinion #78-256 in the *Appendix*. This prohibition does not forbid the pursuit of funding from established grant programs, which is a legitimate municipal function.

Absent express statutory authority, municipalities generally may not undertake fund-raising activities, including the solicitation of gifts. Fund-raising activities undertaken to benefit a municipality should be directed and administered by individuals in their private capacities or by community groups not affiliated with the municipality. In turn, these private individuals or groups may make donations to the municipality. Municipalities are generally authorized to accept gifts of real and personal property to be used for proper municipal purposes. Gifts generally may be accepted on the condition that they be used for a specified municipal purpose so long as the condition does not require the local officials to surrender or renounce their powers and duties. Once accepted by the appropriate municipal official or body (usually the

governing board), monies generally must be transmitted to the chief fiscal officer. These funds constitute municipal monies and, accordingly, expenditure of these monies is generally subject to the same statutory requirements (e.g. budgetary appropriation, audit of claims, competitive bidding) as other municipal revenues.

-from Office of State Comptroller workshop handout, 3/29/00

This limitation on municipal fundraising also applies to various town and village committees (recreation, historical, bicentennial, community improvement, etc.). While municipal boards have the power to create such committees, they cannot give these committees more power than the board itself has. Since a municipality cannot solicit funds, neither can it authorize its committees to solicit funds.

Examples

- A town appointed committee is charged with planning the town's bicentennial celebration. This committee sets up a bank account into which it begins to deposit monies raised from bake sales and other activities conducted to raise funds for the celebration. There are two problems with this example. First, the committee may not solicit contributions or conduct fundraising activities as a municipal entity. Secondly, municipally-appointed committees may not hold funds in separate accounts outside of the appointing municipality's control.
- A village asks its recreation committee to work with a landscape architect that the village has hired to plan improvements to the village park. Local citizens form their own ad hoc group to raise funds for a new playground at the park. This group then donates monies raised to the village on the condition that these funds be put toward new playground equipment (or the group may purchase the equipment and donate it to the village). This is an acceptable scenario, as the village had no role in forming the volunteer group and is not directly connected with the fundraising activities. Some members of the village recreation committee may even choose to participate in these fundraising activities in their role as private citizens. However, the State Comptroller's office advises elected officials to not participate in fundraising activities for municipal projects, even as a private citizen, to avoid the perception of anything improper.

Accepting Contributions of Money

When a municipality accepts a gift of cash for a designated or "restricted" purpose, it has several options. If using the money relatively soon, the monies could be deposited in the municipality's *operating fund*. This would require a modification to the budget, but could be appropriated immediately since the gift would be considered 100% surplus. However, to better track the gift amount, or if it is not likely to be expended before the next fiscal year, then the contribution should be deposited in the *capital fund* or the *trust and agency account*. The New York State Office of the Comptroller can provide guidance on specific cases.

MUNICIPAL GIFTING: Payments to Other Organizations or Associations

A gift is a voluntary transfer of money, goods, or services without any consideration or compensation. The gift prohibition in Article VIII of the New York State Constitution forbids a municipality from giving or loaning its money, services, or property to a private individual, corporation or association.

Although municipalities may not *give* funds to a private entity, they may contract with such entities to provide specific activities or services that constitute a proper municipal purpose. Agreements with private entities to provide a proper municipal service need not be complex. The agreement should state the purpose of the contractual arrangement—e.g. to provide a public recreational program, maintain or improve municipal recreation facilities, maintain a municipal historic structure, or erect and maintain a veterans’ monument. It should be clear that the service provided is in furtherance of a legitimate municipal purpose. The agreement should state the payment amount and should specify what services will be provided by the private entity in return. Boards should consult with their municipal attorney before entering these types of contracts due to the variety of forms they may take.

SPECIFIC EXAMPLES

This section addresses the areas where municipal gifting concerns most commonly arise: patriotic causes, recreation, and historical associations. The information in the pages that follow is adapted, with permission, from “The New York State Constitutional Gift Prohibition and How it Applies to Your Municipality,” an out-of-print publication by the New York State Conference of Mayors.

Patriotic Organizations and Causes

A municipality **cannot**:

- donate real property or sell real property for a nominal sum to a veteran’s organization, even if the land will be used for the erection of a veteran’s memorial;
- donate public money to a veteran’s organization including donations of money for celebrations or parades, or toward the purchase of real property.

Exceptions: General Municipal Law does specifically authorize municipalities to support certain patriotic causes. A municipality may: 1) acquire lands and erect a veterans’ monument; 2) pay funds for the erection or maintenance of a veterans’ monument on public lands to a soldier’s monument corporation pursuant to the guidelines under the Not-for-Profit Corporation Law section 1405; 3) acquire land and erect a memorial building. For more on this issue, see Comptroller’s Opinion #81-399 in the *Appendix*.

Recreation and the Arts

A municipality may spend funds for municipal recreation programs for its citizens, but cannot give money to private groups for recreational purposes unless a proper contract is entered into. Absent such a contract, municipalities **cannot**:

- make a charitable donation to any private committee or organization that provides recreation programs to youth or any other segment of the population;
- make a gift or appropriate money for the expense of operating any privately owned community center aside from those which may be lawfully appropriated to a youth recreation project operated by the municipality (for example, leasing space for a municipality operated program);
- finance a little league program, a CYO basketball tournament, or a privately sponsored bowling league where the athletic program is sponsored by interested individuals and not by the municipality;
- contribute funds to a cultural group for the purpose of supplying residents with concerts, art exhibits, or musical productions;
- support a local drum and bugle corps.

Exceptions: Although funds cannot be given to private groups, municipalities may provide for recreational programs or contract with groups to provide recreation to the general public. The key to contracting with private groups is that the municipality must retain control of the program and not simply be a pass through for funds. In addition, the value of the service must be commensurate with the sum paid. Municipalities **may**:

- contract to provide for band concerts to be given annually or on specific dates;
- contract with a private organization for the operation of an approved municipal youth program, provided that: the program is available to all those within the designated age group regardless of race, creed, or national origin; such a privately operated program is under the supervision and control of the municipality; and the contract specifies the particular services which the municipality is to receive and the amounts and purposes for which it will incur expense.

A private entity may charge an admission fee to a performance for which municipal funds have been paid, provided that the charge does not contradict the terms of the contract with the municipality. A municipality may also establish a reduced fee schedule for the use of the recreational programs or facilities by senior citizens pursuant to General Municipal Law section 95-a.

Little League

Municipalities cannot donate money or goods for use by a privately operated Little League or similar organizations, as they are limited to one sport, have set formats, and are controlled by national parent organizations. There is little or no room for municipal control, and often all interested persons cannot participate.

Exceptions: Although money cannot be directly donated, a municipality may enter into a contract with a Little League affiliated organization to have it run a portion of the municipal recreation program. The program must be under the supervision and control of the municipality and must be legitimately instituted for the benefit of the municipality. As in all previously mentioned examples, the contract should be for a fixed sum and should specify for what and how the funds are to be expended. See the *Appendix* for State Comptroller's Opinion #82-225.

Historical Associations and Events

Municipalities **cannot**:

- make outright gifts of funds or services to support private historical associations or societies;
- subsidize the printing of a history of the municipality when such a book is not being published in connection with a program conducted by the municipality commemorating a historical event;
- make a contribution to any private entity for a celebration.

Exceptions: Under the NYS Arts and Cultural Affairs Law section 57.07, municipalities may appoint a local historian and expend funds to maintain historic structures, monuments, and collections, and to publish local histories. Again, a municipality cannot make a gift to private historical associations, but it may contract with such entities to provide maintenance or assist in publication of local histories and records.

A municipality may expend funds for an historical commemoration or other public celebration only if the funds have been appropriated for such and are retained in the control of the municipal board. An outside group may assist in carrying out the commemoration, but the funds must remain in control of the governing board of the municipality. For more on this topic see State Comptroller's Opinion #81-357 in the *Appendix*.

Further questions on specific situations should be referred to the Office of the State Comptroller or to your municipal attorney.

**MUNICIPAL FUNDRAISING
AND
GIFTING**

APPENDIX

OPINIONS OF THE STATE COMPTROLLER

THOMAS P. DiNAPOLI
STATE COMPTROLLER



NANCY G. GROENWEGEN
COUNSEL TO THE COMPTROLLER

HELEN M. FANSHAWE
DEPUTY COUNSEL

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

January 8, 2014

Mr. John P. McLaughlin
8 Willow Lane
Irvington, NY 10533

Dear Mr. McLaughlin:

In response to your request and pursuant to the Freedom of Information Law, we are enclosing the following opinions:

Opn Nos. 74-1102, 77-292 and 78-256

These opinions represent the views of the Office of the State Comptroller at the time they were rendered. The opinions may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mitchell S. Morris'.

Mitchell S. Morris
Associate Counsel

MSM/naj
Encs.

TOWN LAW, §§64(8), (17-a); GENERAL MUNICIPAL LAW, §96-a: Discussion of methods available to town to provide for preservation of historical sites within a subdivision designated for development. A town may not publish an advertisement soliciting cash donations.

November 7, 1974

74-1102

David A. Sloane, Esq.
Sloane & Feuer, P.C.
38 Oak Street
P.O. Box 149
Patchogue, N.Y. 11772

Re: Town of Brookhaven

Dear Mr. Sloane:

This is in response to your letter of October 8, 1974, and subsequent telephone conversation with Mr. Bandel of this Department, in which you ask several questions concerning historical properties located in the town.

First, you inquire whether a town may enact local legislation with respect to property and buildings of historical significance located on private property designated for development. Town Law, §64(17-a), authorizes a town, and General Municipal Law, §96-a, authorizes a county, city, town or village to provide for the protection and preservation of historic sites, and also to provide for appropriate and reasonable control over the use of neighborhood private property within public view. Section 64(17-a) further provides:

"Any such measures, if adopted in the exercise of police power, shall be reasonable and appropriate to the purpose or if constituting a taking of private property, shall provide for due compensation.."

Thus, a town may enact local legislation with respect to historical sites within the guidelines set up by sections 64(17-a) and 96-a. In the present situation, legislation requiring a developer to donate historical properties or structures to the town or to pay the cost of moving such structures, would seem to be unauthorized in that it would amount to a taking of private property without due compensation. In the present situation, it would appear that condemnation by the town of the historical sites in question might best suit the town purposes.

You also ask whether a town may create a non-profit historical organization which would be eligible for tax-deductible donations. It is well established that municipal corporations have only those powers which are specifically delegated by statute or are necessarily implied therefrom. We are aware of no provision of law authorizing

a town to create a non-profit corporation. It is, therefore, our opinion that this proposal is impermissible.

You also inquire about the income tax consequences to donors of historical artifacts who make their donations directly to the town. This Department is not in a position to pass on questions of possible tax deductions for individual taxpayers. We would suggest that inquiries of this nature be directed to the Internal Revenue Service.

Finally, you ask whether a town may solicit "matching funds" for particular projects from private individuals and organizations. Generally speaking, matching funds are moneys which come from the state or federal government to match the amount of money appropriated by a municipality for particular projects. Thus, it is inaccurate to refer to donations from private individuals as matching funds. However, we assume that you are asking whether a town may budget funds for a particular project with such project to be contingent upon the receipt of donations from private individuals or groups, and that the town would advertise for such donations.

Town Law, §64(8) clearly authorizes towns to accept gifts of money or property. However, we find no authority which would authorize a town to publish paid advertisements for gifts. Furthermore, as a matter of fiscal policy, it would be improper for a town to appropriate funds on a contingency basis and difficult, if not impossible, to budget anticipated gifts. Therefore, it is our opinion that this final proposal is unauthorized and impermissible.

Of course, if a local newspaper is so informed it might carry the story of a particular town program as a news item. Thereafter, any donations received as the result of such story could be accepted and treated as surplus funds.

We trust that the above will be of assistance to you.

Very truly yours,

ARTHUR LEVITT
State Comptroller

By

James C. Cooper
Associate Counsel

BANDEL: jvd

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

GENERAL CITY LAW, §20(4); CITY CHARTER OF GLENS FALLS, §1.4.2: A city may not sponsor a public subscription campaign to finance construction of a convention center.

May 4, 1977

77-292

Bernard T. McCann
City Attorney
City of Glens Falls
121 Maple Street
Glens Falls, New York 12801

Re: City of Glens Falls

Dear Mr. McCann:

This is in response to your letter of March 21, 1977 wherein you ask the following:

Inquiries

(1) Is there any prohibition against a municipality conducting a public subscription campaign whereby members of the general public are asked to donate money toward the cost of constructing a convention arena center, where such donation entitled the donor to receive a name plate, with his name on it, to be placed on a seat in the convention center?

(2) If there is no prohibition against such campaign, are the donations made to the campaign considered charitable donations, deductible for income tax purposes?

Statement of Law

(1) and (2) Notwithstanding the fact that the contributor would receive a name plate to be placed on a seat, these subscriptions are, basically, in the nature of a gift (see 57 N.Y. Jur., Subscriptions, §1). General City Law, §20(3) clearly authorizes a city to accept gifts of money or property and the City Charter of Glens Falls, §1.4.2, likewise, specifically authorizes such acceptance.

However, we not only find no authority for a municipality itself to conduct a campaign to solicit such gifts, either by advertisement or otherwise, but we also find it to be contrary to public policy and, hence, not a lawful city purpose. We have found similar arrangements in the past to be "unauthorized and impermissible" (Op. State Compt. No. 74-1102, 1974, unreported).

It should be noted that should a local civic organization, rather than the city itself, sponsor the subscription campaign, any contributions received therefrom could thereafter be accepted by the city as a gift (see Op. State Compt. No. 74-1102, 1974, unreported; 16 Op. State Compt. 64, 1960).

Since it is our opinion that a municipality may not conduct a subscription campaign, your question regarding whether donations to such a campaign would be income tax deductible, becomes moot. At any rate, this Department is not in a position to pass on questions of possible income tax deductions for individual taxpayers. Any inquiries of that nature should be directed to the Internal Revenue Service (Op. State Compt. No. 74-1102, 1974, unreported).

We

Conclusion

A city may not sponsor a public subscription campaign to finance construction of a convention center.

We trust the above will be of assistance to you.

Morris:sr

Very truly yours,

ARTHUR LEVITT
State Comptroller

By

James C. Cooper
Associate Counsel

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

TOWN LAW, §64(8): There is no authority for a town or any of its departments or agencies to either solicit funds for use in town programs or participate in fund-raising activities for such purpose. A town may, however, accept gifts of moneys solicited by a private civic group.

April 7, 1978

78-256

Joel H. Sachs, Esq.
Town Attorney
Town of Greenburgh
Box 205
Elmsford, New York 10523

Re: Town of Greenburgh

Dear Mr. Sachs:

This is in response to your letter of March 14, 1978 wherein you ask whether either the town, or agencies or departments thereof, may perform certain fund-raising activities. These activities consist of the solicitation of donations from local businesses for use in various town programs, and the sponsorship of fund-raising events such as cookie sales and carnivals.

This Department has stated that there is no authority for a municipality to solicit gifts, either by advertisement or otherwise, and that such an activity would be contrary to public policy and, therefore, not a proper municipal function (Op. State Compt. No. 77-292, 1977, as yet unreported, enclosed for your reference; Op. State Compt. No. 74-1102, 1974, unreported).

We feel this conclusion would apply equally in the case of solicitation by agencies or departments of the town which function as mere agents of the town itself.

Similarly, it is our opinion that it would be improper for either the town or any town department or agency to sponsor fund-raising activities such as cookie sales or carnivals either through monetary support or by allowing use of town facilities therefor. As stated above, there is no authority for municipal participation in such activities and such participation would not constitute a proper town purpose.

We note, however, that Town Law, §64(8) authorizes a town to accept gifts of money or property, subject to such terms and conditions as may be prescribed by the grantor. Therefore, should a local private civic group, rather than the town itself or any of its departments or agencies, sponsor fund-raising activities or solicit funds for use by

Joel H. Sachs, Esq.

-2-

78-256

the town, contributions made to the town by such group of moneys it collected could be accepted by the town as a gift.

We trust the above will be of assistance to you.

Very truly yours,

ARTHUR LEVITT
State Comptroller

By

James C. Cooper
Associate Counsel

Morris:sr
Enc.

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.