

Appendix E: TOML Gift of Public Funds and Use of Measure R and U Funds Legal Opinion

Analyzing whether or not a Town expenditure is a gift of public funds is highly fact-specific, and it's hard to give concrete answers without understanding the nature and amount of the proposed expense(s), and how they are intended to benefit the Town. This is normally reviewed on a case by case basis. The government code section on prohibiting the gift of public funds is attached.

The general rule is that an expenditure of public funds isn't a prohibited gift of public funds if the expenditure mainly serves a public purpose, even if there is some incidental private benefit. The "public purpose" to be served has to be something that advances the interests of the public entity providing the funding, and there has to be a real connection between the spending and the public purpose. **So any Town funds Mammoth Lakes Recreation (MLR) wants to award or spend have to serve a public purpose of the Town, and can't have more than an incidental private benefit.** A number of past expenditures clearly fall in this category as they tie directly to enhancing Town facilities/services, which are provided as a public benefit. To note a few:

- Enhanced public transit (reduce traffic, improve safety)
- Enhanced public facilities and services (Park related amenities such as the Track, Rec Zone/Ice Rink, public trails/sidewalks/MUPs, new signage)
- Planning for future facilities (plan your parks, performing arts center)
- Maintenance of new/expanded facilities (Trails End Park, the Track)

Neither Measure R nor U set forth specific public purposes but each defines areas that the Town has in the past assisted as part of its municipal functions. The Town has by policy allocated funding for the promotion of the Town, supported community events (i.e. July 4th celebration), provided support for events that use public property (i.e. street closure for races) in part as part of a Town economic development strategy that is designed to bring visitors to Mammoth Lakes as tourism is the Town's primary industry. Using Measure R and U to assist in the development and support of this industry may serve the same public purpose as the Town's support. Helping fund events to bring visitors to Mammoth seems to serve a public purpose, with the question is it primary or if the public purpose becomes the incidental value. The arts and culture statement in Measure U would support these types of events to enrich community life and add to the economic vibrancy, if the event meets the language of the Measure U ordinance. But if MLR is considering funding an event that is mainly intended as a fundraiser for a private organization, the specific details would need to be provided and reviewed to see if there is a clear understanding of how the event itself is going to serve the Town's purposes. Or we'd have to understand the nature of the private organization, and how a donation to that organization is going to serve the Town's purposes. A "good event" or the "good achieved" by a non-profit are not in themselves a public purpose.

Funding for-profit vs non-profit is a distinction that does make a difference. A nonprofit is inherently limited in how it can spend funds, but if those funds are coming from the Town we still need to make sure that the purposes of those expenditures line up with the Town's public purposes. A for-profit entity has no obligation to spend funds to benefit anyone other than itself, so spending Town funds primarily to benefit a for-profit entity, with no real public purpose, is going to be difficult to justify.

Beyond the general gift of public funds issues, there is also the need to make sure that any R or U funds MLR intends recommend for allocation are going to be used for purposes that are consistent with the allowable uses of R and U funds. In reviewing the ballot support materials, past projects and the actual language of the approved measures, some the previous funding allocations are likely on the edge of being appropriate in meeting a reasonable reading of the language. Use of Measure R funds is defined by the voter approved ordinance and is stated in the Town Code as follows: **“All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund designated for use by the town of Mammoth Lakes only for the Mammoth Lakes recreation, trails and parks funding set forth in the expenditure plan for the administration and expenditure of the tax proceeds,** attached to the ordinance codified in this chapter as Exhibit "1." The expenditure plan may be amended from time to time by a majority vote of the town council, so long as the funds are utilized for recreation, trails and parks funding. For the purposes of this chapter, "recreation, trails and parks funding" means planning, construction, operation, maintenance, programming, and administration of all town recreation facilities and programs, trails and parks managed by the town.”

Measure U funds can be spent only be used as approved by the voters, as provided for in the Town Code as follows: “On and after July 1, 2011 all proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund designated for use by the Town of Mammoth Lakes, and used only for the following purposes: Planning, construction, operation, maintenance, programming and administration of facilities and projects for mobility, recreation, and arts and culture. Such tax proceeds shall not supplant existing funds used for the purposes set forth above.

Funds allocated for an event held as a fundraiser for a nonprofit (or for profit) entity would not appear to fit very well into either the R or U list of funding purposes. Measure U also references specifically “facilities and projects for . . .” so approval of funding for special events or other proposals need to have a clear connection to stated purpose of the measure.

The Town certainly supports MLR and its goals, but we need to make sure that attention is being paid by both the Town and MLR to the limitations on how R and U funds can be spent. That may mean that MLR might have to find other sources of funding besides R and U in order to provide financial support for some events or projects.

As noted above, the finding of an expenditure being a “gift of public funds” is fact specific. However, if there is a concern with a specific request or if MLR finds that it has difficulty in articulating the public purpose, caution should be exercised. The same caution should be used in articulating how a specific allocation recommendation meets the reasonableness standards for meeting the plain language of the Measure R and U as approved by the voters.

Govt Code 8314 as of 7-6-09

8314. (a) It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

(b) For purposes of this section:

(1) “Personal purpose” means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. “Personal purpose” does not include the

incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

(2) “Campaign activity” means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. “Campaign activity” does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.

(3) “Public resources” means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.

(4) “Use” means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the state or any local agency for which a monetary value may be estimated.

(c) (1) Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty.

(2) If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasurer of that city.

(3) No civil action alleging a violation of this section may be commenced more than four years after the date the alleged violation occurred.

(d) Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the informational activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(e) The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal Code.

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