Municipal purchase of test equipment for employee

Number: INFORMAL

Date: June 04, 2013

Mr. Clifford B. Shepard
City Attorney
City of Mount Dora
2300 Maitland Center Parkway
Suite 100
Maitland, Florida 32751

Dear Mr. Shepard:

On behalf of the City of Mount Dora, you have asked this office to comment on the authority of the city to purchase equipment for use by a city employee during working hours to test bio-waste disposal technology owned by the employee and for which the city has no proprietary ownership or licensure interest, but would have the right to use the technology at no charge.

Section 10, Article VII, Florida Constitution,[1] generally protects public funds and resources from being exploited in assisting or promoting private ventures when the public would at most be incidentally benefitted.[2] Should the paramount purpose of an expenditure be a public one, however, an incidental benefit to private entities or individuals does not violate Article VII, section 10, Florida Constitution.

The test for public financing of a capital project when a pledge of public credit or taxing power is involved is that it must serve a paramount public purpose; but, where there is no pledge of the public's credit, it is enough to show only that a public purpose is served.[3] Thus, "it is immaterial that the primary beneficiary of a project be a private party, if the public interest, even though indirect, is present and sufficiently strong."[4]
It is a basic premise that municipal funds may be used only for a municipal purpose.[5] The determination of what constitutes a valid municipal purpose for the expenditure of public funds, however, is a factual determination for the legislative and governing body involved.[6] Such a determination must be based upon appropriate legislative findings after consideration of the facts presented. It must be made by the city commission and cannot be delegated to this office.[7]

I trust that these informal comments will be of assistance to you in considering this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsrh

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[1] Section 10, Art. VII, Fla. Const., in pertinent part, states: "Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person[.]"

[2] *See Bannon v. Port of Palm Beach District*, 246 So. 2d 737 (Fla. 1971).

[3] *Linscott v. Orange County Industrial Development Authority*, 443 So. 2d 97, 101 (Fla. 1983).

[4] *State v. Housing Finance Authority of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979), citing *State v. Putnam County Development Authority*, 249 So. 2d 6 (Fla. 1971).

[5] *See* Ops. Att'y Gen. Fla. 83-06 (1983) and 72-198 (1972).

[6] *See, e.g., State v. Housing Finance Authority of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979).

[7] *See, e.g.,* Op. Att’y Gen. Fla. 83-05 (1983), stating that the legislative determination and findings as to the purpose of the ordinance and the benefits accruing to the county from the program could not be delegated to the Attorney General, nor could the Attorney General undertake to make such legislative findings on behalf of the county.