



# the review

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Festivals Send Michigan  
Communities to New Heights

# HOWELL'S MICHIGAN CHALLENGE BALLOONFEST

It's ALL About Community!



Detroit Concert of Colors annual diversity festival in Midtown Detroit.

# MUNICIPAL CONTRIBUTIONS TO FESTIVALS AND EVENTS

By Kenneth Lane

**A**cross Michigan, event and festival organizers are preparing for the upcoming spring and summer seasons. Often, events and festivals are held annually within the same community and, over the course of many years, they become recognized as a local tradition. So, it is not uncommon for event organizers to ask their “host” city, village, or township for a monetary donation or a contribution of staff or other resources. When considering such requests, a city, village, or township should determine whether a contribution of public funds or resources is permissible or prohibited under relevant Michigan law. Following is a discussion of the general legal principles that govern the expenditure of public funds and/or resources and some guidelines that can be applied when a community is considering a request to contribute to an event or festival.

## Constitutional Prohibitions

When considering a contribution of public funds or resources to any event or festival, the analysis should begin with our State Constitution. Article 9, Section 18, of the Michigan Constitution of 1963 provides:

The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.<sup>1</sup>

This section of the constitution, while clearly applicable to the state of Michigan, has been interpreted by Michigan courts to also apply to all political subdivisions of the state, including cities, villages, and townships.<sup>2</sup> Article 9, Section 18, generally prohibits public funds or resources from being expended or given away without a fair exchange of value.<sup>3</sup>

Additionally, Article 9, Section 18, requires that appropriations of public funds be made only for a public purpose. Therefore, generally, a city, village, or township may not make an expenditure or donation to a private individual or entity, no matter how worthy the cause or circumstance.<sup>4</sup> Furthermore, in taking this limitation a bit further, Michigan courts have determined that communities may not contribute public funds to a private nonprofit corporation even if the nonprofit is performing activities for the public benefit. Accordingly, not only must a community receive something of value in return for an expenditure of public funds or resources, that something must directly provide a public benefit or serve a public purpose.

However, Article 9, Section 18, does not prevent the expenditure of public funds or resources if authorized by state statute. Additionally, Michigan courts and the State Attorney General have determined that the prohibitions referenced above do not apply when a city, village, or township contracts with a private, nonprofit corporation or a public entity to perform services on behalf of the community that the city, village, or township could directly perform itself.

## Statutory Authority

Most political subdivisions of the state have no inherent authority, and can only exercise those powers granted to them by the constitution or state statute. Therefore, in addition to making sure there is a receipt of value

and a public purpose to be served by an expenditure, a community should also determine if there is any underlying statutory authority. If there is a statutory provision that expressly authorizes or at least reasonably envisions the type of expenditure being considered, the expenditure may be made. If there is no such provision, or if the language within a statute is being “stretched” to fit a particular circumstance, the expenditure is probably unlawful. Some statutory provisions that may relate to annual events and festivals include (not an inclusive list):

- MCL 123.851 allows cities, villages and townships to expend funds and resources for celebrations of Armistice (Veterans), Independence and Memorial Days (may include a fireworks display).
- MCL 399.171 and 399.172 allow a city, village or township to appropriate funds or resources to advance historical interests within the community.
- MCL 117.4k allows a city’s charter to provide for the appropriation of public funds to a nonprofit institution engaged in the promotion of civic, artistic or cultural activities within the city.



*Creativity abounds at Ann Arbor's summer Art Fairs.*

## Application to Events and Festivals

As provided above, a request for a city, village, or township to contribute to an event or festival must be carefully considered. When applying the legal principles outlined above, a community might consider the following questions:

1. Is the expenditure of funds or resources allowed by a state statute? For example, sponsorship of a fireworks display during an Independence Day event is permissible.
2. Does the expenditure of funds or resources provide value in return? For example, some communities provide police or public works services, but will charge the festival organizer for the costs associated with those services.
3. Does the expenditure of funds or resources directly provide a public benefit or serve a public purpose? When considering this question, a community might ask

<sup>1</sup> Const. 1963, art. 9, §18.

<sup>2</sup> *Alan v County of Wayne*, 388 Mich 210 (1972).

<sup>3</sup> *Id.*

<sup>4</sup> *City of Gaylord v Gaylord City Clerk*, 378 Mich 273 (1966).

who will be the primary beneficiary. It is important to remember that a city, village or township may not make an expenditure to a private entity or cause, no matter how worthy.

4. Is the city, village, or township contracting for services which it is legally authorized to provide? For example, a contract with a fireworks display company for an Independence Day event is permissible.

This article provides a general overview of the legal principles that a community should consider when an event or festival organizer comes calling with a request. Specific circumstances may dictate how these legal principles are applied. Therefore, it is important to consult with your local attorney before committing public resources to an event or festival.

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<sup>5</sup>Id. See also, OAG No. 5212 (1977)

<sup>6</sup>Brozowski v City of Detroit, 351 Mich 10 (1957), OAG No. 5212 (1977), OAG No. 6431 (1987).

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