



March 10, 2006

Barbara A. Durand
City Auditor
140 Main St.
Marlborough, MA 01752

Re: Grants to Non-profit Organizations
Our File No. 2006-75

Dear Ms. Durand:

This is in reply to your letter asking about the legality of grants to non-profit organizations.

Such grants are hard to justify under the state constitution's Anti-aid amendment (Art.18, 46 & 103, <http://www.mass.gov/legis/const.htm#art103.htm>), which prohibits public funds or property from being given to charitable, educational, religious or other private organizations, no matter how worthy. The amendment provides in relevant part as follows:

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking **which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents.** (Emphasis added)

The kinds of expenditures barred by the amendment are those that substantially benefit or aid private organizations in a way that is unfair, economically or politically. Even indirect benefit to a non-profit organization may fall afoul of the amendment. In *Bloom v School Committee of Springfield*, 376 Mass. 35, the Supreme Judicial Court struck down a statute providing for the loan of textbooks to students attending private schools. For an exception to the prohibition involving the provision of special education services, see *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981); see also *Fifty-one Hispanic Residents of Chelsea v. School Committee of Chelsea*, 421 Mass. 598 (1996) for a case in which a private organization (Boston University) was held to be a public agent under special legislation. "Aid" would include any grants, contributions or donations by the city to the various non-profit organizations you cite for the specific purpose of directly supporting or assisting their operations.

This does not mean that the city is precluded from purchasing services from non-profit organizations in the same way it purchases services from for-profit entities. As a party to a contract, the city would be compensating the organization for services rendered to the city, instead of giving it a gift or grant. Any such contract should be in writing, identify the services to be provided and set forth the payment schedule. Payment for any particular service could only be made after the service was provided. G.L. Ch. 41 §56.

We hope this information proves helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/CH