

Pam. This should answer your question . Let me know if you want me to do anything further.

Ron

Sent from my iPhone

Begin forwarded message:

From: "Colleary, Kathleen" <colleary@dor.state.ma.us>
Date: October 16, 2013 at 5:21:03 PM EDT
To: "Ron Rappaport" <rrappaport@rrklaw.net>
Subject: RE: Town of Edgartown Fax to Email Message <5EEE5268>

Ron,

Does the town offer community/adult education programs to the residents and is it contracting with this organization to provide some of those public programs or provide other services the town can provide to the public? Or is this intended as a grant to the organization to assist it fund its operations? If the latter, the Anti-aid amendment would seem to bar any payment. Mass. Const. Amend. Article 46, § 2, as amended by Article 103. That amendment provides, in relevant part:

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 authorized by the Commonwealth or federal authority or both.... (Emphasis supplied.)

The amendment bars expenditures of public funds for the purpose of supporting or assisting private organizations or institutions in carrying out their essential missions and operations, or otherwise providing them with a substantial benefit, in a way that is unfair, economically or politically. See *Bloom v. School Committee of Springfield*, 376 Mass. 35 (1978)(Loan of textbooks purchased with public funds to students attending private schools violates the Amendment because it aids the schools in carrying out their essential mission); *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981)(Public funds appropriated for contracts with private schools providing special education to students for which no public school programs are available does not violate the Amendment because it aids public schools to provide and children to obtain required special education services in an economically feasible manner). Consequently, a city or town may not generally make a grant or donation of public funds to a charitable organization. It may, however, contract with the organization to provide specific services that further the municipality's public purposes. See *Helmes v. Commonwealth*, 406 Mass. 873 (1990) (Commonwealth contract with a non-profit corporation for funds to rehabilitate an historic battleship as a war memorial open to the general public for educational purposes was for public purposes, resulted in a public benefit and did not violate the Anti-aid Amendment).

I hope this is of assistance.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
617-626-2400
DLSLAW@dor.state.ma.us

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

From: Ron Rappaport [mailto:rrappaport@rrklaw.net]
Sent: Wednesday, October 16, 2013 4:07 PM
To: Colleary, Kathleen
Subject: Town of Edgartown Fax to Email Message <5EEE5268>

Kathleen. Am I correct that Edgartown cannot provide public funds to this private entity?

Thanks for looking at it.