

Background

The Columbus City Charter establishes safeguards for the expenditure of public funds. However, neither the charter nor state law establishes specific prohibited uses of public funds by a charter municipality – but such provisions are established for non-charter municipalities. Because this represents a fundamental protection for our citizens, council staff suggests consideration of a charter amendment regarding prohibited uses of public funds.

Issue Overview

Sections 159, 160 and 161 of the Columbus City Charter govern contracts of the City of Columbus. Taken together, these sections provide the following common-sense protections for Columbus' taxpayers:

- First, we can't spend money the auditor says we don't have or anticipate having.
- Second, we can't double-dip once we promise money for a specific thing.
- Third, if we don't follow the rules, the contract or obligation is void.

Granted, the charter gives more specific directions and uses a lot more words. But, we can sum up the gist of the sections as follows – we have a duty to be responsible stewards of the public's money, and use multiple checks and balances to hold ourselves accountable in the process.

The Ohio Revised provides specific safeguards regarding the appropriate use of public funds. These safeguards apply to three specific areas of government spending.

First, ORC 9.03 states that the governing body of a municipality may not use public funds to communicate in a manner that:

- Is defamatory, libelous, or obscene;
- Promotes tobacco or alcohol, or any illegal product or service;
- Promotes illegal discrimination based on a limited protected class;¹
- Supports or opposes any labor union or its activities;
- Supports or opposes candidates for public office; investigations or recalls of public officials; or bond or levy campaigns.

Second, ORC 9.03 states that the governing body of a municipality may not use public funds as follows:

- To compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for public office, recall, or bond or levy issue.

¹ ORC 9.03(C)(1)(c) Promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry;

- However, this doesn't ban an employee from attending public information sessions.

Third, ORC 9.03 bans any person from knowingly conducting a direct or indirect transaction of public funds for the benefit of a political entity.²

However, based on consultation with the City Attorneys' Office, these sections do not apply to the City of Columbus. ORC 9.03(A)(1) defines "political subdivisions" in a manner that exempts charter municipalities – placing cities like Columbus outside the reach of this general law. As a result, even our general charter provision incorporating general laws of the state would not cause this section to apply to the city.

Even if the sections of 9.03 applied to the City of Columbus, state law arguably provides incomplete protections, inconsistent provisions, and questionable penalties for violation.

The limitation on use of public funds applies only to the "governing body" of a political subdivision, not to the recipient of those funds.

The general prohibition on political use of public funds applies to all "persons," yet that term likely does not apply to the City of Columbus according to an Ohio Legislative Service Commission analysis of H.B. 326, 129th General Assembly.³ The same analysis finds that penalties for violation of the "political use of public funds" would likely not apply to city government – thus creating a duty with no adequate remedy in the event of violation.⁴

The limitation on use of public funds to discriminate does not adequately cover all protected classes – a common flaw on Ohio law. As we have previously noted, this inadequacy makes default to state non-discrimination laws very problematic for our city.

The general prohibition on supporting or opposing "bond or levy" issues does not extend to other ballot issues, such as the initiative, referendum, recall, or charter amendments. As noted by one legal analysis of this section,

"The fact that public money may not be expended to promote or oppose ballot issues, absent clear statutory authority, reflects the conviction that the right to approve or reject a ballot issue of any sort is bestowed upon the electors, and the unauthorized public expenditure to influence their votes would interfere with that right."⁵

² Specifically, the following: campaign committee; political action committee; legislative campaign fund; political party; campaign fund; political committee; separate segregated fund; or candidate.

³ <http://www.lsc.state.oh.us/analyses129/h0326-i-129.pdf>

⁴ Ibid.

⁵ 2008 Op. Att'y Gen. No. 2008-035 at 8. It is interesting to note that this and related Attorney General opinions do not appear to consider public expenditures by a charter municipality. See also, "Self-Audit Check: Don't Spend Public Money for Political Purposes." Frost Brown Todd, LLC. March 6, 2013.

It is council staff's contention that these issues may be best addressed in the city charter, as they address fundamental limitations on the ability of the government of the city of Columbus to conduct or permit the expenditure of public funds – in much the same way as Sections 159, 160 and 161 of the charter.

Conclusion

Based on the deficiencies in general laws of the state, staff does not recommend incorporating state law by reference and including a provision to nullify the exclusion of charter municipalities from the definition of political subdivision in ORC 9.03.

There are two potential avenues to place these provisions in the charter.

The more general approach would state that neither the City of Columbus, nor a recipient of its funds, may use such funds in any manner contrary to the charter or city code. This approach would also require council to establish by ordinance prohibited uses of public funds and penalties for violation. Because of the flexibility of this approach, council would have discretion over content, but would be required to adopt such an ordinance.

The more specific approach would state that neither the City of Columbus, nor a recipient of its funds, may use such funds in a manner contrary to the charter or city code; and would specify certain prohibited uses in the charter. This approach would allow council to add to, but not take away from, the following prohibited uses of public funds:

1. To benefit a campaign committee, political action committee, legislative campaign fund, political party, campaign fund, political committee, separate segregated fund, or a candidate;
2. To promote discrimination on the basis of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, family or military status, or any other status that is protected by federal, state, or local law or ordinance; or
3. To expressly advocate for the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage or defeat of an initiated municipal ballot issue.⁶

While there are merits to both approaches, there may be value in elevating certain restrictions to the level of charter provisions. These prohibitions represent fundamental protections for the citizens and electors of our city, while other protections may be of a changing nature.

Regardless of the approach, council staff suggests that the Charter Review Commission recommend amendment of the Columbus City Charter to address the issue of prohibited uses of public funds.

⁶ 1999 Op. Att'y Gen. No.99-030 covers this issue in great detail.