

May a city make an annual gift of money, a donation, or a stipend to an organization or private entity?

The question is not whether a city may make an annual stipend, but whether the expenditure of public money is for a public purpose. As a general rule, a gratuitous donation or gift by a city is prohibited by the Texas Constitution.

Article XVI, Section 50 of the Texas Constitution prohibits lending the credit of the state, and Article III, Section 52 prohibits the Legislature from authorizing political subdivisions to lend their credit or to grant public money.

The clear purpose of the constitutional provisions is to prevent the gratuitous application of public funds for private use. *Brazoria County v. Perry* 537 S.W. 2d 89 (Tex. Civ. App.-Houston [1st. Dist.] 1976, no writ); *Edgewood Indep. v. Meno*, 893 S.W. 2d 450, 473 (Tex. 1995). The Constitution, however, does not invalidate an expenditure that incidentally benefits a private interest if it is made for the direct accomplishment of a legitimate public interest. *Byrd v. City of Dallas*, 118 Tex. 28, 6 S.W. 2d 738, 740 (1928). If the city determines that a particular expenditure accomplishes a valid public purpose, and despite the fact that one or more individuals or corporations might incidentally benefit, the expenditure will still be valid. The key question is whether a valid public purpose is being directly accomplished by the expenditure. *City of Corpus Christi v. Bayfront Assoc. Ltd.*, 814 S.W.2d 98 (Tex. App. – Corpus Christi 1991, writ den.) (Cities may not expend public funds simply to obtain for the community the general benefits resulting from the operation of the corporate enterprise).

What constitutes a public purpose, however, cannot be answered by any precise definition other than to state that, if an object is beneficial to the inhabitants and directly connected with the local government, it could be considered a public purpose. *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934). The governing body of the city must make the determination of whether a certain expenditure meets the public purpose test, and must also place sufficient controls on the transaction to ensure that the purpose will be carried out. The city council's determination is subject to judicial review. However, if the council recognizes the expenditure as having a valid public purpose on the record, the courts are not likely to overturn that determination. Courts are hesitant to second-guess the legislative determinations of local elected officials. Therefore, unless a fraud on the part of the governing body or a total lack of evidence supporting a public interest exists, the courts are not likely to declare that the city expenditure is invalid.

If an elected official submits a written statement declaring his or her intent to resign effective one month from the date of the writing, when is the resignation effective?

After the passage of eight days from the date of the resignation, or whenever the city accepts the resignation, whichever comes first.

Section 201.023 of the Election Code provides that “(i)f an officer submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier.” Why would the legislature apply this timeframe to a resignation? The eight day period gives the council an opportunity to make arrangements to replace the resigning member in advance of his or her actual legal resignation. This is especially important in situations involving the simultaneous resignation of multiple council members in a general law city. Section 22.010(d) of the Local Government Code, which applies to Type A general law cities, reads: “If two or more vacancies on the governing body exist at the same time, a special election shall be ordered to fill the vacancies.” Therefore, if two council members simultaneously submit their resignations, the city’s hands are not tied. The council has time to call a special meeting at which it may affirmatively accept the resignation of one councilmember, appoint his replacement, then affirmatively accept the resignation of the second councilmember, and then appoint *his* replacement. *See* Attorney General Opinion GA-0046 (2003). This way, there is technically never more than a single vacancy and the city can avoid the expense of a special election.

Are committees and subcommittees of a city’s governing body subject to the Open Meetings Act?

It depends. Committees and subcommittees that are composed of less than a quorum of the governing body are subject to the Open Meetings Act if they have control over public business, or if their decisions may have influence on the governing body. *See Finlan v. City of Dallas*, 888 F. Supp 779 (N.D. Tex. 1995); Attorney General Opinions JC-60 (1999) and H-238 (1974). Furthermore, standing committees and subcommittees composed of one or more members of the governing body should generally comply with the Open Meetings Act due to their potential influence on the governing body. *See* Attorney General Opinions JM-1072 (1989) and H-3 (1973). Committees consisting only of staff of the governing body may also be subject to the Open Meetings Act if they have authority over public business. *See* Attorney General Opinion JC-053 (1999).

By contrast, purely advisory committees without any control or supervision over public business or policy are not subject to the Open Meetings Act. *See* Attorney General Opinion No. H-994 (1977). For example, a court has held that a city grievance committee is not a governmental body subject to the Open Meetings Act where it has no power to make binding decisions, but only to make recommendations. *City of Austin v. Evans*, 794 S.W. 2d 78 (Tex. App.- Austin 1990, no writ). A planning and zoning commission, even when advisory only, is nevertheless subject by statute to open meeting laws. TEX. LOC. GOV’T CODE., § 211.0075.

City officials should always consult the laws creating the committee, be it an ordinance, resolution, or state statute, to determine whether or not the committee is subject to the Open Meetings Act. When in doubt, seek legal counsel and err on the side of caution.

Who may examine the certified agenda or tape recording of a closed meeting?

The certified agenda or tape recording of a closed meeting may not be disclosed to the public. TEX. GOV'T CODE § 551.104(c). In fact, disclosing the agenda or tape to member of the public without authority could constitute a criminal misdemeanor. TEX. GOV'T CODE § 551.146.

However, attorney general opinions have concluded that members of the governing body, which includes the mayor and council members, may examine certified agendas and tapes of closed meetings if the council as a whole approves of such a practice. *See* Attorney General Opinion DM-227 (1993). It is not necessary that the councilmember who wishes to examine the agenda or tape was present at the particular meeting. *See* Attorney General Opinion JC-120 (1999). He or she must, however, be a current councilmember or mayor and may not make copies of the certified agenda or tape.

Does adoption of an ordinance establish or change speed limits inside the city?

No. Prima facie speed limits across the state are established by statute. TEX. TRANS. CODE § 545.352. The standard speed limit on a street in an urban district is set at 30 mph and the standard speed limit in an alley is 15 mph. The statute grants cities the authority to alter speed limits when doing so is justified on the basis of the results of an engineering and traffic investigation by the Texas Transportation Commission. When such a study does justify alteration, the change becomes effective when the governing body erects signs giving notice of the new limits. However, H.B. 87, enacted during the 79th legislative session and already in effect, allows a city to declare a speed limit as low as 25 mph if the governing body finds (at its discretion) that the prima facie speed limit of a road is unreasonable or unsafe. TEX. TRANS. CODE § 545.356(b-1).