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# AUDITOR SAND OFFERS "BEST PRACTICES" ADVISORY TO GOVERNMENTS ON WORKING WITH NON-PROFITS

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Auditor of State Rob Sand today offered "best practices" advice to governments on how to legally and effectively work with non-profits. The issuance of this advice is in response to requests from governmental leaders seeking clarification on this matter.

Governments are prohibited from making direct donations and in-kind contributions to non-profits under Article III, Section 31 of the Iowa Constitution.

> **"Extra compensation-payment of claims-appropriations for local or private purposes.** Section 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly."

The Iowa Attorney General has issued numerous opinions stating the same. However, there are two situations in which public funds may be provided to a non-profit.

1) When the payment is for economic development purposes as outlined in Chapter 15A of the Code of Iowa, specifically Chapter 15A.1(1)(a), 15A.1(1)(b), and Chapter 15A.2.
    a. 15A.1(1)(a): "Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives, and other financial assistance to or for the benefit of private persons."
    b. 15A.1(1)(b): For purposes of this chapter, "**economic development**" **means** private or joint public and private investment involving the **creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost**."

c. 15A.2: "Before public funds are used for grants, loans, tax incentives, or other financial assistance to private persons or on behalf of private persons for economic development, the governing body of the state, city, county, or other public body dispensing those funds or the governing body's designee, **shall determine that a public purpose will reasonably be accomplished by the dispensing or use of those funds**. In determining whether the funds should be dispensed, the governing body or designee of the governing body shall consider any or all of the following factors:

   i. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

   ii. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes, or which generate tourism-related activities.

   iii. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains, and benefits are warranted in comparison to the amount of the funds dispensed.

   iv. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds."

2) When the government enters into a contract for services with the non-profit.

   a. Agreements should be reduced to a written contract, not a verbal agreement or a motion or resolution in the minutes. However, the contract should then be approved in the minutes and the public purpose for the expenditure of the tax dollars in question should be clearly documented in the minutes.

   b. The terms and conditions of each party to the contract should be plain, detailed, and unambiguous.

c. There should be clear language as to how much the government is paying, the schedule of payments, and what the government (or the public) is receiving from the non-profit in return. Overall, consideration should be balanced for each party and the government should seek the highest value possible for taxpayers.

d. When a government contracts with a non-profit and the non-profit is not providing a clear service directly to the government but rather the service is to the public, the public benefit will be the "consideration," or benefit, the government receives under the contract. This consideration, how the public (as a whole) is benefitting should be made clear in the contract.

e. The total cost of the contract and required supporting invoices and/or documentation should be clearly defined. The government should ensure it is not overpaying for the product or services received. For example, if, under the contract, the non-profit is to provide X number of meals to homebound people, the contract should clearly state how the public is benefitting as a whole and clearly state what documentation is required to support the number of meals provided.

f. All contracts should include a requirement for the non-profit to account to the government for the public funds and how they are spent to meet the state public purpose requirement. The form and frequency of that accounting should be clear in the contract.

g. The contract should be signed by a representative of the government and a representative of the non-profit.

Additional guidance for governments can be found on the Auditor of State website at https://www.auditor.iowa.gov/faqs/.