

## Kenockee Township Board of Trustees

### Special Meeting June 1, 2022

Meeting was called to order at 7:02 p.m.

Roll Call was conducted with all board members present. 10 Residents in attendance.

Supervisor Molesworth led the Pledge of Allegiance.

**Approval of the Agenda: Motion made by Treasurer Shappee, 2<sup>nd</sup> by Trustee Schieweck to approve the meeting agenda for the special meeting. Motion Passed 5-0.**

**Kenockee Firefest Activities:** Trustee Schieweck advised the board that the firemen's fund committee needs a letter from the board advising that the township approves the group to have an entertainment/beer tent on the township property.

Treasurer Shappee advised that the letter needs to state that the township board is granting the firemen's group permission to use our parks for their fundraiser.

Treasurer Shappee advised that she spoke with Trustee Schieweck and advised him that Kenockee Township can have no part in the fundraiser. The Parks and Recreation is only part of the fundraiser, because of the concession stand. But technically it's the firemen's fund that is having the event and doing the fundraiser, so all of the inclement expenses have to come from the firemen's fund account. The township can not fund any of the expenses. Shappee stated, that her question is that the email from MTA stating that we need to discuss the letter with the attorney to make sure it is worded properly, so that Kenockee township is not responsible for it, because our insurance will not cover it. She stated that she would hate to see something negative come out of it and have a claim against the firemen's fund group. Supervisor Molesworth stated, it has happened, a claim against the Yale Lion's has shut down their beer tent. Shappee stated, that she didn't know if signage posted would help prevent some liability, but it is a concern. This is a conversation that needs to be discussed with an attorney. She stated, that she is not stating that she is against them using the parks grounds, but it needs to be done in legal format. Clerk Hill stated, we are just wanting to make sure everyone is covered, no one can afford to be sued as an individual or as an organization, people are suing right now. Treasurer Shappee stated that maybe the firemen's fund group can contact their insurance company for a 1-day rider. Trustee Schieweck stated, that he contacted the township insurance company and was advised that the township could add the firemen's fund group to the township insurance as a rider. Treasurer Shappee stated, that she didn't believe that they could be added by law, because they are a separate entity, not part of the township. She stated, that you can't go rent a hall and be added to their insurance.

She stated, that she doesn't know if the information went to our insurance company properly and they may have thought it was our fire department not a separate entity.

Trustee Schieweck stated, that we're not going to have enough time to figure it all out. He stated that Stephanie Hanselman needs the letter tomorrow to take to the Sheriff's department to be approved and send on to the State of Michigan. Stephanie stated, that is the timeline of how they request things be received for approval. All documentation must be received in Lansing by the 8<sup>th</sup> of June. Shappee stated, that she would believe it would be accepted by the State without insurance information included. Trustee Hawks asked, with there being alcohol involved is there someone tendering the beer that's going to be licensed to do so. Trustee Schieweck advised, that only firefighter's firemen's fund members are allowed to work the beer tent and serve the beer. Stephanie Hanselman stated, that they are the only one's allowed to handle the money and the passing of alcohol. Jason Rottmann stated, that the board members couldn't because of not being part of the fireman's fund group. Trustee Schieweck asked, if we could move forward with the process to get the paperwork to the Sheriff's department and if something gets kicked back due to the liability insurance, we still have the letter. Clerk Hill asked, did Schieweck receive something in writing from the insurance company. Trustee Schieweck stated, that he sent the email off to the insurance company but has not received anything back at this time. Schieweck stated, that he talked with the insurance company and told them what we are having and the fireworks are a NO go. He stated, that the fireworks will be held off property at a residence home across from the park away from event attendees. Supervisor Molesworth asked if the fire department was involved in previous Kenockee fests. He was advised by Jason Rottmann that the fire department was not. Treasurer Shappee advised, by law mileage money can not be used to purchase anything for the fest.

Treasurer Shappee read from the document received from the MTA on firefighter's and fundraising. How is a private organization is formed pg. 2? (See attached). It states that the organization and the individual firefighters may not use township money, property or other assets. The only exception to that is where the township makes facilities available to the public such as a community hall or recreational facility. The organization can use it to the extent and in the same manner as anyone else paying any fees or deposits to use the facility in scheduling it the same way as anyone else.

Shappee stated, so firemen's fund would have to rent the park. We can't treat you differently. The township is not allowed to donate the park. So, once we rent the park to the fireman's fund you shouldn't need a letter from the board. You should just need your rental agreement. Jason Rottmann, stated that the rider should come from the township. Shappee stated, that our insurance is paid by mileage money, therefore, can not be used to pay for this rider. It's against the law. Harry Mericle stated, that maybe we need to call the firemen's fund insurance company to see if they can add the rider on their insurance. Stephanie stated, she would contact them.

Jason Rottmann, stated that maybe they need to find another location to hold the firefest or move it back to downtown. He stated, that the beer tent and concessions will be the only fundraising the rest is just public relations and donations. We've been talking about this for a couple of months and now two weeks prior to the event we have issues. Clerk Hill advised, that he was advised a couple of months ago regarding the insurance possibly being an issue. Treasurer Shappee stated, that no one is asking that this be stop. Trustee Hawks stated, that we are just trying to figure out the best solution with everyone working together to make this happen. Trustee Schieweck stated, that he didn't think that with prior Kenockee fest coming from the park's funds and with soccer and other funds he didn't think that it was consider township money. Clerk Hill responded, that she was advised by MTA if we deposit funds into a township bank account it is considered township funds. Trustee Schieweck asked, if he could just give the soccer money to the fireman's fund as a donation. Treasurer Shappee advised, no, he could not, because he is doing that sport through Kenockee township sports program. Trustee Schieweck stated, but it's not mileage money. Shappee advised; it doesn't matter. Supervisor Molesworth stated, it's still public funds. Schieweck stated, that we might as well cancel the fest, because the fireman's fund can't afford it on their own. Jason Rottmann, stated that we're not going to be able to afford it, it was planned as a joint event with parks. Trustee Hawks advised, that what you need to do is start with your insurance company to see if a rider can be added, it may not cost anything with it being a 1-day event. Jason Rottmann, stated but we still have expenses that you're not allowing the parks and recreation already pay for. Treasurer Shappee stated, that she thought everything was already worked out. I thought that Parks and Rec's was doing everything that was related to the concessions stand. Trustee Schieweck stated, yes, but he was going to pay for the beer being used in the entertainment tent and make the money back. Treasurer Shappee stated, that She thought that the beer didn't have to paid up front. Trustee Schieweck advised that he found out that information today. Jason Rottmann stated, that the fireman's fund paid the full fireworks event that was suppose to be split with the parks and recreation dept. Trustee Hawks inquired on how much the beer payment was upfront. Trustee Schieweck stated, he is waiting on the email regarding that information from the distributor. Trustee Hawks inquired; how much do you know what to purchase upfront. Jason Rottmann responded that they have contacted other agencies and was advised what they purchased for their events. Shappee stated, that she didn't have a problem with the event. We just want it to be done following the laws. She stated, here is what you all need to understand. It states it right here in the email. What the auditor's job is, is to look for unlawful expenditures. Our audit is next month. If they should find unlawful expenditures and the State wants to prosecute, guess who they're prosecuting. The township boards. I'm out. I refuse to vote on an unlawful expenditure. Stephanie Hanselman stated, that donation checks were sent to the township, will they receive that money. Shappee stated, yes, it was sent to us and we will refund those funds to your fireman's Memorial fund. It's not township money and was sent to us by mistake.

Shappee stated, that she has a document that stated we can't purchase flowers for a funeral, throw candy at a parade etc.

Trustee Schieweck advised Stephanie to contact the insurance company and He would personally donate the \$3,000.00 to the fireman's fund for their side. I will give you the check next week. Supervisor Molesworth asked, I spoke with Josh, but would there be anyway that the pit would work to hold their event? Jason Rottmann stated, he felt that the cars from the car show would not want to drive down dirt roads. Jason Rottmann inquired, what did they do regarding insurance for the past Kenockee Fest? Supervisor Molesworth asked, Pete Walters can you advise how the old boards took care of it? Pete stated, that they had a Parks committee and he advise them and sometimes they would disagree with him. Pete stated, that a township can have a celebration that pertains to specific holiday celebrations, such as, Independence Day etc. Treasurer Shappee advised, yes, that is correct, we do know that information. Pete stated, that the township did a fundraiser by selling Kenockee t-shirts and used the funds from the fundraiser to hold the Kenockee fest. Pete stated, yes, the township is supposed to adhere the mileage language, But the township does have other income that comes in that is not mileage money.

Supervisor Molesworth asked, so what the plan as far as what the parks were to pay for, were they going to be paid back? Trustee Schieweck stated, it was going to be a 50/50 profit split. 50/50 expenses and 50/50 income.

Pete Walters advised, that someone did get injured during a past Kenockee fest. They fell over a rope and threatened to sue the township. It was all worked out and doesn't believe there was a settlement. Pete stated, the fire department was always present and participating with the Kenockee fest volunteering and being supportive. Clerk Hill inquired, if the previous township board obtained a rider for the events. Pete advised, he didn't recall ever seeing a rider or hearing of one being added.

Supervisor Molesworth stated, that his fear was following the Yale Lion's Club lawsuit their beer tent was shut down due the suit.

Treasurer Shappee stated, that the Fireman's fund could write the park rent check the night before to help give them the upfront funds to purchase the items required for their event ahead of time.

Clerk Hill advised, that when she held the vendor event at the Yale Bologna festival, it was held in the American Legion and the wine vendor was able to sell at the event under the Legions liquor/beer license and their own license and insurance. So could the firemen's fund get someone to run the beer tent, that has their own serving license, permit, that are insured and bonded to do events for the day?

Trustee Schieweck stated, that they reached out to the Emmett VFW and was advised they don't have the staffing to be able to do it this year.

Clerk Hill advised, that there are beer companies that come out and serve at actual events and they would receive a portion of the profits. These organizations are licensed by the State of Michigan and insured to do these events. Is there a way to find out how to do something like this from the distributor? It may be worth hiring them to help with liability of serving the drinks.

Supervisor Molesworth advised, that the only local event that having a beer tent was Marysville. Stephanie Hanselman stated the Lion's Club in Marysville runs their beer tent.

Shappee asked, what about having the Pine's in Peck, they're an American Legion. Trustee Hawks stated, what about the Lion's in Ruby. Clerk Hill stated, maybe if we pay them a flat rate to serve at our event. Maybe they would consider it. I'm just trying to figure a way of doing it.

Treasurer Shappee stated, that when you look at the list of what is considered unlawful expenditures, unlawful is donations including use of property or equipment to little leagues, scouts, big brothers, big sisters, donations to community organizations, you are considered a community organization. We just don't want to get in trouble. Supervisor Molesworth, stated that with them renting the park it's no longer considered a donation. Clerk Hill advised; they will get their funds returned following the event. Trustee Hawks stated, that is why he is saying to add the township location of the event. Molesworth stated, as an additional insured. Shappee stated, additional insured usually doesn't cost anything. Molesworth stated, maybe an additional \$50.00. Clerk Hill inquired, who are you insured with? Stephanie Hanselman advised, Westbend Mutual Insurance Company.

Keith Fones advised, that the problem with asking the other local organizations this late, is that they too have to go to their boards and discuss and approve it. It may be too late for this to happen.

Treasurer Shappee advised; I have \$300.00 that will be refunded to your organizations from the checks that were sent to the township by mistake from their sponsors. Clerk Hill advised, that she will cut the check tonight following the meeting. Money will be deposited to and refunded from other expenditures under general fund.

Treasurer Shappee stated, that she feels that the board doesn't need to write a letter, that the park rental contract should be all that is needed. Trustee Hawks inquired, if we had a copy of the community hall rental agreement with alcohol liability clause. He was advised, the board has not seen one. Clerk Hill asked, does the fireman's fund had an agreement from previous events held at the community hall? Jason Rottmann stated, that he believed he may have a copy that the fire hall. He recalls having to add a rider for alcohol with an event.

Jason stated, that it was several years ago. Shappee stated that when she rented a hall, it was \$100.00 beyond rental for insurance coverage. She stated, that they added the rider to their policy for coverage.

Trustee Schieweck advised, that the beer distributor has agreed to hold the check until after the event. He stated, that D&T Entertainment has agreed to run the beer tent and serve the drinks for a cost of \$500.00 plus tips for the bartenders. They carry a million-dollar liability insurance policy for such events. They will provide all bartenders to serve.

Schieweck asked if he would still need a letter from the board. Shappee stated, no that the rental agreement would cover it. She stated, that the insurance clause is in the rental agreement.

Clerk Hill advised, that the township will need all copies of insurances and permits to attach to the rental agreement.

Trustee Schieweck stated, that we will still need to have someone checking IDs at the entrance and to help with security in the tent.

Chief Jason Rottmann stated, that would be an easier way to do it. Have them staff the bartenders seeing that they are licensed and insured.

Schieweck stated, that the distributor has agreed to accept in return all that has not been opened from the event. The difference will be refunded back to the firemen's fund.

Supervisor Molesworth asked, couldn't you make this a Juneteenth celebration?

Trustee Schieweck asked, that he can't have the insurance, because it's all the fireman's fund now. He stated, the parks and recs are on the flier. Shappee stated, that they are running the concession stand as their fundraiser. Schieweck stated that the pancake breakfast is part of the parks being put on that day. Can he still have that going on under Parks and recs? Shappee advised; yes, you're running the concession stand and breakfast as a fundraiser, not renting the park for the event. Clerk Hill asked, is the fireman's fund members still willing to help with the pancake breakfast under the park's fundraiser? Jason advised; they would help.

Schieweck advised; the beer truck will arrive on Friday night. Shappee asked, how are you securing it until the event. Schieweck stated, he will be camping out at the parks for security reasons. Jason Rottmann, stated that the beer truck will be secured until Saturday.

Supervisor Molesworth stated, now we put our heads together and got things solved.

Shappee advised that the rental date on the agreement will need to state from Friday June 17<sup>th</sup> through Sunday June 19<sup>th</sup>, 2022.

Clerk Hill inquired; is there going to be a contract with D&T entertainment signed by the fireman's fund. If so, please provide it along with all the insurance information to the office.

Trustee Schieweck inquired do we apply for just the township fireworks with the county or does it need to be filed with the State of Michigan? Clerk Hill advised, that something needs to be approved since the fireworks are not on the days listed as approved holidays. Trustee Hawks stated that the board will just need to approve it.

**Supervisor Molesworth entered a motion to approve the township permit to put on the fireworks display on the township parks adjacent property on June 18<sup>th</sup>,2022 at dusk. Trustee Hawks 2<sup>nd</sup> the motion. All in favor Motion Passed 5-0.**

Treasurer Shappee inquired about obtaining the fireworks permit. Trustee Hawks advised, that wherever the purchase of the fireworks was made, they would provide a copy of the permit.

Treasurer Shappee stated that any group or township resident age 18 or older wishing to conduct a fireworks display must apply to local government unit for a permit for that display. The applicant must provide proof of financial responsibility in the form of bond or insurance policy. The township board must determine if it will accept a bond or require an insurance policy in the amount of coverage. Before issuing a permit, the township board must execute the competency of the pyrotechnic of the person setting off the fireworks. (See attached fireworks documentation).

Trustee Hawks advised the R&R Fireworks will give the purchaser a form for the permit. Treasurer Shappee asked, that The Fireman's Fund committee will contact R&R Fireworks to ask further questions regarding the guidelines. Treasurer Shappee asked that a courtesy call be given to the Sheriff's department to advise them they will be having fireworks display on June 18<sup>th</sup>, 2022. Clerk Hill advised to confirm that they don't need our motion of approval on record at the department. The fireman's fund members will be contacting the Sheriff's department.

Supervisor Molesworth made a Motion to adjourn meeting, 2<sup>nd</sup> by Clerk Hill All in Favor 5-0. Meeting Adjourned at 8:20 p.m.

Minutes prepared by:

Clerk Hill





# Smart Steps to Lawful Expenditures

## 1. Townships Don't Donate.

A township cannot make a gift of public money, property or other assets. It's a gift if the township gets less than equal value in return.

## 2. Public Money Can Be Used Only For Public Purposes.

Public money cannot be used for a private interest.

### **Justice Cooley on taxation and using public funds for a private purpose:**

"It must be imposed for a public, and not for a mere private purpose. Taxation is a mode of raising revenue for public purposes only, and ... when it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation and becomes plunder."  
*People ex rel. Detroit & H.R. Co. v. Salem Township Bd.* (20 Mich. 452, 1870)

## 3. Townships Need Statutory Authority to Spend Public Money. "Simon Says!"

If a law says or implies that a township may spend public money on an activity, then it is a lawful expenditure (as long as you get equal value or better in return).

But if you can't point to a statute that authorizes townships to spend money on a particular activity, then you have no statutory authority. It's an unlawful expenditure.

**Keep it in perspective:** Townships were not created to "Do Good." Townships exist to assess property, levy taxes, administer elections, and provide other public services.

Many other organizations do exist to "Do Good." The fact that a township board must decline to spend public money on a private activity does not mean that there is anything wrong with the activity or the organization that asked for help. Individual board members can always reach into their own pockets if they feel strongly about an activity or cause.

## 4. Townships Can Contract.

If it is lawful for a township to spend public money on an activity, then a township may contract with another entity to provide that activity.

But remember—a township cannot make a gift of public money. So you must get equal or better value in return for township money. A written contract can help establish the value the township is getting for its residents.

--Catherine Mullhaupt, MTA Staff Attorney, Revised March 2016  
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**A township can spend public money only for public purposes that are expressly authorized or implied by the Michigan Constitution and statutes.**

Article VII, §34 of the Michigan Constitution of 1963 states, “The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.”

The Michigan Supreme Court also stated in *Hanselman v Killeen*, 419 Mich. 168 (1984), that “local governments have no inherent powers and possess only those limited powers which are expressly conferred upon them by the state constitution or state statutes or which are necessarily implied therefrom.”

**A township cannot make a gift of public money or assets. The township must receive equal or better value in exchange for public money or assets.**

Article VII, § 26 states: “Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.” According to the Supreme Court in *In re Request for Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich. 93 (1988), this applies to townships.

Article IX, §18 also states, “The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.” The Supreme Court held in *Black Marsh Drainage District v Rowe*, 350 Mich. 470 (1958), that this applies to townships. According to the Court in *Kaplan v City of Huntington Woods*, 357 Mich. 612 (1959), a gift or donation of money or other property by a municipality constitutes a violation of this constitutional prohibition.

If a township is asked for money, a board should follow these steps:

**1. Determine if a township is authorized by law to spend money for the purpose involved.** Look for a law that authorizes or requires a township to spend money for that purpose.

**2. Determine if the township board wants to contract to have the service or activity done.** If a township is authorized to spend money to perform a service or activity, then a board may choose to contract with another governmental unit, public or private organization, or person to do so. But remember—the board still decides where and how it will use township money. Simply because a township **could** contract for a service does **not** mean it must. Board members have a duty to decide how to best use public resources for the township as a whole.

If a township contracts with a private entity, the township may fund or help to fund projects or programs that the township itself would have lawful authority to perform. That means there may be some activities a township might not be able to fund through a private organization. For example, a township can contract with Meals on Wheels to provide meals to senior citizens, because townships are specifically authorized by law to provide services to senior citizens. But a township cannot contract with Meals on Wheels to provide meals to people who are not senior citizens, because no law authorizes townships to do that.

Depending on the program or project done with a private entity, there may also be increased exposure to liability, because although the township has governmental immunity, a private entity does not. A township should work closely with its legal counsel to determine what risks, if any, might arise from the type of program/project being considered.

**3. Ensure that the township is receiving an equal or better value for its money.** A township cannot give public money with no expectation in return. Even if it is for a valid, public purpose, a township cannot make a gift of public money or assets—it must receive at least the same value in return.

With either a public or private entity, there must be some form of agreement/contract that makes it clear that the money is being spent on a township public purpose and the township is receiving equal or better value in return. The contract need not be lengthy or involved; it can be a simple written agreement describing what will be done and how much the township will pay.

