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MEMORANDUM

August 30, 1999 No. 13

TO: KAREN STROMME, Audit Manager, King County
State Auditor's Office

FROM: MARY JO DIAZ, Assistant Attorney General
General Counsel Unit

SUBJECT: **SISTER CITY EXPENDITURES**

You have requested the advice of this office on an issue that has arisen during the course of audits of several cities. As I understand the facts in this matter, several cities are engaging in a Sister City program whereby the city sets up a relationship with a foreign city in order to understand the culture and to establish trade ties with that city. Typical activities when visiting with a Sister City include: lunch or dinner meetings, receptions, official gift exchanges, and other information exchanges. Specifically, you have asked the following questions which I have paraphrased for ease of response:

- (1) Do cities have authority to participate in Sister City programs to enhance cultural awareness and encourage trade?
- (2) Do cities have authority to engage in hosting of foreign dignitaries and gift giving when involved in Sister City programs?

Based on the analysis set forth below, I would conclude that first class and optional code cities have authority to participate in Sister City programs. However, these entities are not authorized to engage in hosting and gift giving to foreign dignitaries. Of course, the views expressed are those of this writer only and should not be considered a formal opinion of the Attorney General.

ANALYSIS

There are various classifications of cities authorized under Washington law, such as, first class cities, second class cities, code cities, and towns. The authority of cities and towns is governed by the principle that municipal corporations are limited to those powers expressly granted to them by the Legislature and to powers necessarily or fairly implied in or incident to the powers expressly granted. (Citations omitted.) See AGO 1991 No. 17, at 2.

At least as to matters of local concern, however, this general rule does not apply to cities ...that have adopted charters pursuant to article 11, section[s] ...10, of the Washington Constitution, . . . or to cities operating under the Optional Municipal Code, Title 35A RCW. These cities ...have legislative power akin to that of the state, except that their actions cannot contravene any constitutional provision or legislative enactment. Thus, such a city ...has broad legislative power except when restricted by enactments of the state. (Citations omitted.)

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AGO 1991, No. 17, at 2. Therefore, under these principles, charter cities (first class) and code cities do not need express statutory authority to participate in Sister City programs. Second class cities and towns would need express authority.

The question then becomes what activities a city may financially support in their Sister City participation. Clearly, the costs for compiling and sharing trade information would be appropriate as well as the expenses of city staff involved in the program. However, the city's provision of meals and gifts to private parties is prohibited by the state Constitution. Article VIII, § 7 provides, in pertinent part, that:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, ...

The court in State ex rel. O'Connell v. Pt. of Seattle, 65 Wn.2d 801, 399 P.2d 623 (1965) held that the expenditure of public funds for the entertainment or "hosting" of shippers, influential businessmen, and other private individuals was a gift, thus was prohibited by Const. art. VIII, §7. The Port asserted that the main purpose of the hosting was the promotion of business. Because of the benefit received from such expenditure, the hosting of private individuals was not a gift of public money or property. The Court disagreed and found that:

Since the expenditure of port funds for promotional hosting is without consideration, the meals, drinks, etc., are given to prospective customers. The fact that they are given for a legitimate purpose does not change their nature as gifts. The constitutional provision specifies the purposes for which public money or property may be given away-the necessary support of the poor and infirm.

Id. at 804. This does not include the giving away of meals and gifts to private individuals under a Sister City program.

In 1966, a new provision was added to the Constitution which permitted port districts to engage in promotional hosting. Article VIII, § 8, directs:

The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion or promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 7 of this Article.

Although ports may now engage in promotional hosting, no other city, county, town or municipal corporation may do so.¹ Article VIII, § 8 does -not repeal the prohibition of Article VIII, § 7 against the promotional hosting by those other public entities. See Port of Longview v. Taxpayers, 85 Wn.2d 216, 533 P.2d 128 (1974).

¹In 1985, the Constitution was again amended to permit agricultural commodity commissions to use agricultural commodity assessments for promotional hosting. See Article VIII, §11.

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In summary, although first class cities and code cities may participate in Sister City programs, they may not engage in promotional hosting and gift giving with the visiting dignitaries.

I trust the foregoing will be of assistance to you.

MJD:jb

cc: Lisa Tagman

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