

Can public funds be allocated to a private institution such as a local preschool?

The answer is yes, when this allocation serves a legitimate public purpose and is approved by the voters of the town. According to 24 V.S.A. § 2691, “at a duly warned town meeting for that purpose, a town...may appropriate such sums of money as it deems necessary for the support of social services programs and facilities within that town for its residents.” Therefore, any social service organization that serves a legitimate public purpose and receives voter approval can become a recipient of town money.

In order for the voters to authorize this allocation, the question must be placed on the town meeting ballot. A request for appropriations can be placed on the ballot in one of two ways. *First*, the question can be placed on the ballot when the organization seeking funding files a petition with the town clerk that contains 5% of the voters’ signatures, 40 days before the date of the meeting. 17 V.S.A. § 2642(a). *Second*, the selectboard can establish a policy for how social service appropriation requests will be included in the warning for the town meeting. A typical policy is to automatically place the previous year’s appropriation on the ballot the following year. Under this policy, any organization that has not previously been appropriated funds by the town, or that desires an increase in funding, must petition the selectboard to have its request placed on the warning for town meeting.

Once the request has been placed on the ballot, it is up to the voters to decide whether or not to approve the appropriation. When considering this decision, the voters must look at the specific purpose for which these funds are to be used. The primary objective for the use of these funds must serve a public purpose. As long as this public purpose is the actual rationale for the appropriation, any private benefit that occurs will be considered incidental to the primary public purpose. “The test of a public purpose should be whether the expenditure confers a direct benefit of reasonable general character to a significant part of the public, as distinguished from a remote or theoretical benefit.” Eugene McQuillan, *Municipal Corporations* § 39.19, at 38 (3rd ed. 1995). Ideally, prior to the vote, the selectboard will have applied the public purpose test before placing any question on the warning. Therefore, this system of checks and balances will ensure that a public purpose is truly served with the use of these public funds.

It can be shown that a preschool that serves town residents is a legitimate public purpose. A preschool that provides daycare as well as a structured program to develop young minds provides a benefit to town residents. This opportunity prepares these children for the regiment of formal education while providing an educational daycare service for working families. Therefore, the preparatory education for the children, combined with the benefit conferred upon the parents of these children, can be defined as a legitimate public purpose that may be worthy of an allocation of town funds.

- *Daniel Phillips, Law Clerk, VLCT Municipal Assistance Center*

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