

## LEGAL OPINION MEMO

TO: Peter Brixius, City Manager  
Bruce Nelson, City Finance Director  
John Ponikvar, Mayor  
City Council Members

FROM: Sherman P. Romney, City Attorney

DATE: February 20, 2019

SUBJECT: Legality of Proposed Matching Grant Program for Local Businesses

The City of Craig has recently adopted a significant leadership role in economic development within the City of Craig. One economic development step identified by the City Council has been to support local businesses by offering a 1:1 matching grant program where the City would grant a local business matching funds for amounts up to \$25,000, which money would be used for specific purposes such as making improvements on the facades of local businesses.

The legal issue is whether the City of Craig can use a matching grant program to local businesses as part of its economic development efforts despite a provision in the Charter that appears to restrict the use of appropriated money for the benefit of private persons and corporate entities like a local business.

### 1. City of Craig Charter Provision

Within Article VII of the Charter for the City of Craig is a provision which states as follows:

Section 15. Appropriations Forbidden. No appropriation shall be made for any charitable, industrial, educational or benevolent purposes to any person, corporation, or organization not under the absolute control of the City, nor to any denominational or sectarian institution or association, except, when participating with the county, state or federal government, or any agency thereof, in a project beneficial to the City. (Renumbered by Ord. 957 approved by voters on 11/7/06)

### 2. Colorado Constitution Provision

This Charter provision is modeled after a similar provision in the Colorado Constitution found in Section 34, Article V, which states as follows:

Section 34. Appropriations to Private Institutions Prohibited. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denomination of sectarian institution or association.

### 3. Case law

We can call these two sections “Anti-Appropriation Clauses”. The constitutional provision is very helpful to the City in understanding the legal effect of our charter provision because it is so similar in its content that there have been Court opinions, or case law, throughout the years that interpret an Anti-Appropriation Clause such as our Charter provision.

In a case called In Re Interrogatory Propounded by Governor Roy Romer on House Bill Romer on House Bill 91S-1005, 814 P.2d 875 (1991), the Colorado Supreme Court considered whether a couple of bills which would allocate and use funds from taxes imposed on aviation fuel to create an incentive program to encourage the private development of aviation facilities which would create jobs in aviation. Before signing the bill, Governor Romer asked the Supreme Court to give an opinion.

In that case the Supreme Court identified a number of cases where the Court had approved the use of public funds that benefited the private sector if the funds supported a project or program which served a defined “public purpose”. This “public purpose exception” has allowed governmental entities to budget money from their general funds to support things such as public participation in utility construction, construction of bridges outside of city limits which support city purposes, urban renewal projects and creation of subsidized housing programs for workers among other things.

### 4. Analysis

The City of Craig operates under the “public purpose exemption” each and every year when it supports local no-profit organizations such as the Chamber of Commerce, the Human Resource Council, the Moffat County Economic Development Program, the Moffat County Airport, the Fire District for fireworks and other organizations that seek money for local events.

States and other local communities have multiple programs providing a local benefit which operate using in part governmental funds. The pathway for such expenditures is “wide and paved” to allow a legislative action, like passing a budget ordinance, which allows the City to determine how it will spend its money to benefit the local economy and provide for financial stability for the City through programs using public funds.

If the City Council determines that a program such as a matching grant program for local businesses meets specific public benefits then in my opinion such a program and expenditure of public funds is allowable under the laws of the City of Craig and the State of Colorado. The specific public benefits in the case of the matching grant programs would likely include economic development including the support of existing jobs and businesses in an increasingly difficult economic climate, creation of new jobs, increased tax revenues for long-term stability of the City revenues, the support and improvement of a vibrant downtown economy, and urban renewal.