



STAFF REPORT

DATE: April 3, 2018

TO: Ronald L. Olson, City Manager

FROM: Kathy Davis, City Attorney

SUBJECT: Required Public Purpose for City Support of the Killeen Professional Fire Fighters' Association's Fill-the-Boot Campaign Benefitting the Muscular Dystrophy Association

BACKGROUND AND FINDINGS:

For many years, the Killeen Professional Fire Fighters' Association has participated in a "Fill the Boot" campaign benefitting the Muscular Dystrophy Association. Beginning last year, the Association has conducted its campaign on dates other than those allowed by the city's solicitation ordinance, and has requested to solicit at locations other than those allowed by the ordinance. These changes require that an exception be made to allow that charitable activity on the different dates, and at additional locations. During discussion of this issue, it was revealed that the intent was to use on-duty firefighters to conduct this charitable activity, and that this has been the historical practice.

Article III, Section 52 and Article XI, Section 3 of the Texas Constitution state that the legislature may not authorize any county, city or other political subdivision to lend its credit or grant public money in aid of an individual, association, or corporation. The intent is to prevent local governments from making expenditures of public funds for a private purpose. This also prohibits city employees acting to benefit a private purpose while "on the clock" for the city.

Over the past several years, the city has taken strides to comply with these Constitutional requirements by ensuring that employee groups and associations understand that they can only conduct their group/association activities and participate in charity events while off duty. This has included addressing charity events that had been assisted or staffed by on-duty Parks and Recreations staff, as well as charitable activities conducted by on-duty police officers and employees. It is also the reason the city has been scaling back its participation in the annual United Way campaign over the past few years. Taking these actions is important because there must be accountability in the way the city spends its resources, whether those resources be dollars or employee efforts, and the city must ensure that those resources are expended lawfully.

Courts have interpreted this constitutional prohibition to be met as long as the payment of public funds or use of public resources directly accomplishes a legitimate city purpose, even if it also incidentally benefits a private interest. This determination must be made by the City Council and not by city staff, and must include the following findings: (1) there is a legitimate, predominately public purpose for the expenditure; (2) the city will receive adequate

consideration or return benefit for its donation; and (3) the arrangement has sufficient controls to guarantee that city funds are being used for a municipal public purpose. The benefit must be specific to the city, rather than to the public generally.

In Council's discussion of whether there is a sufficient, legitimate public purpose in allowing on-duty fire fighters to participate in this charitable event, the following should be considered:

- How will the funds collected by city employees be used to benefit the city?
- How are the funds accounted for? Who ensures the security of the donations?
- How will the city be able to verify that the funds are being used for a municipal purpose?
- An employee participating in this event will be covered by workers compensation in case of an accident or injury;
- Are fire fighters required to participate if on duty the day of the event?
- Should the City be listed as a partner with the KPFFA when the donation is made to the MDA?