

**STEWART, MITTLEMAN, HENRY & O'ROURKE L.L.C.**

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Mr. Michael Herring, MPA
City Administrator
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017**Re: Reimbursement for Snow Removal Costs**

Dear Mike:

The Planning and Public Works Committee of the City Council asked me to review the City's authority to reimburse subdivisions for a portion of the costs incurred by the subdivisions for snow removal on private streets, including for private streets that are not open to through traffic.

Under Missouri law, it is unconstitutional for any municipality to use public funds for private purposes. Article VI, Section 25 of the State Constitution provides that, with certain exceptions inapposite to the question at hand, "No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation. . ." *Mo. Const. Art. VI, §25.*

However, the Missouri Supreme Court has continually held that, ". . . no [Constitutional] violation . . . occurs where the expenditure of public funds is for a public purpose." *State ex rel. Mitchell v. City of Sikeston*, 555 S.W.2d, 281, 291 (Mo. banc. 1977); *citing: State ex rel. Farmer's Electric Cooperative, Inc. v. State Environmental Improvement Auth.*, 518 S.W.2d 68, 74 (Mo. banc. 1975); *cf: State ex rel. City of Boonville v. Hackmann*, 240 S.W. 135 (Mo. banc. 1922). Determination of what constitutes a public purpose is left to the legislative bodies. "The public purpose being apparent, it is unimportant that *incidental* benefits may accrue to private interests." *Farmers Electric Cooperative, Inc., supra*, 518 S.W.2d at 74. (emph. added); *See also, Americans United v. Rogers*, 538 S.W.2d 711, 719 (Mo. banc. 1976). A court will not overturn such a determination unless the determination is found to be arbitrary and unreasonable. *Farmers Electric Cooperative, Inc., supra*, 518 S.W.2d at 74. Reasonableness or arbitrariness turns upon the facts of each case, and judicial review focuses on whether substantial evidence supports the municipal legislative determination. *Id.*

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Presently, the City reimburses subdivisions for a portion of the costs incurred for snow removal on private streets that are open to through traffic, but not for streets that are located in a gated community. The rationale for this distinction is that private streets that are not gated are open to public traffic, so although there is an incidental benefit accruing to the private interests of the subdivision property owners receiving the reimbursements, that private benefit is unimportant because the larger public purpose is being provided through the reimbursements. The City's current policy is reasonable and if challenged would have a good chance of withstanding judicial review. If the City were to provide reimbursement for snow clearing on private streets that are gated and not open to the public, the private benefit to those property owners would not be *incidental* to the greater benefit to the public, but would be the primary benefit and would likely not withstand judicial review.

It is my opinion that expanding the City's current policy to provide reimbursement for snow removal costs on private, gated streets would not be allowable under the provisions of Article VI, Section 25 of the State Constitution prohibiting the use of public funds for private purposes.

Please let me know if you have any questions in this regard.

Very truly yours,



Harold V. O'Rourke

cc: Michael O. Geisel

✓ MGH
10/22/15

→ MIKE GEISEL