

PROPOSED POLICIES

TOWN OF BROOKLINE GRANTS AND GIFTS POLICY (Recommendation to the Select Board)

Any grants or gifts received by the Town under General Laws, c. 44, §53A from a charitable foundation, a private corporation, or an individual, shall not be approved by the Select Board unless the grant is deposited into the appropriate gifts and grants account and on the condition that the funds so granted are expended by a Town department, agency, board, or commission directly and not as an intermediary.

TOWN OF BROOKLINE CHARITABLE ORGANIZATIONS POLICY (Recommendation to the Select Board)

The Town shall not enter into any joint venture, funding or other agreement, or any other relationship with any individual or group of individuals, or charitable or non-profit organization, or voluntary organization, or mutual aid or assistance organization, or other entity purporting to be engaged in charitable or other local benefit activities, either directly or indirectly, unless such entities (1) are qualified as a tax exempt organization under a subsection of §501(c) of the Internal Revenue Code (26 U.S.C. §501(c)), (2) have registered with the Non-Profit Corporations/Public Charities Division of the Massachusetts Attorney General's Office, unless exempt from such registration, and (3) are current with its Internal Revenue Service Form 990 filings and its Public Charities Form PC filings.

EXPLANATION

The duties of the Audit Committee include to review and make recommendations to the Select Board regarding the Town's financial management practices and controls (Bylaw §3.5). The above recommended policies are designed to address a transaction (the "Transaction") brought to the attention of the Audit Committee that the Committee recommends be addressed by appropriate formal policies of the Select Board. The Transaction was carried out consistent with current Town policies and Mass. Gen. Laws, c. 44, §53A (Grants and gifts; acceptance and expenditure) ("§53A").ⁱ

The Transaction:

Some of the details of the origination of the Transaction are unclear. What we believe happened is that in the spring of 2021, the Safety Net Fund of the Brookline Community Foundation ("BCF") was approached by Mutual Aid of Brookline ("MAB") for funding for their work providing food and other needs to residents of Brookline. BCF apparently determined that they could not give directly to an organization that was not recognized as a tax-exempt charity under the Internal Revenue Code ("IRC") (26 U.S.C. §501(C)).

Consequently, BCF approached the Town's Department of Diversity, Inclusion, and Community Relations ("DICR"). On April 27, 2021, DICR applied to BCF on behalf of MAB for \$25,000. On May 11, 2021, DICR submitted a request for approval of the Transaction to the Select Board pursuant to §53A and the request was approved.

The application described the initiatives that the grant would be used to fund, including addressing food insecurity, lack of affordable childcare, and direct financial assistance.

The application also described MAB as "a form of political participation in which community members take responsibility for caring for each other. We work to change inequitable conditions, not only by applying pressure to our representatives in government, but by building new social relations that create more livable and supportive circumstances."

The application further noted that they "don't do any kind of needs assessment or require documentation because we understand that these processes quickly become a barrier to some or a series of sometimes difficult, demeaning, and discouraging requirements."

It should be remembered that the Transaction was occurring while the Town and the world were still in the midst of the COVID pandemic and most of the world's economies were shut down or just beginning to re-open. In Brookline, there was a significant continuing increase in people needing food assistance and other assistance and local charities were under great pressure. The Town took multiple steps to assist, including providing funding

to the BCF Safety Net Fund. In that context, we recognize that corners may have been cut in helping the community. This recommendation is not intended to question the motives of any of the parties involved in the Transaction.

BCF Terms and Conditions.

BCF's Grant Terms required of the grantee that it (1) use the grant only for charitable and educational activities consistent with its tax-exempt status, (2) not engage in any lobbying not permitted by section 501(c)(3) of the IRC, (3) acknowledge that it is a public charity under Section 501(c)(3) of the IRC or a municipality. The Grant Terms also required reporting on the earlier of 60 days after completion of the project or the end of the grant period and that the grantee maintain books and records that can be examined by BCF.

Town Providing Financial Intermediary Services for BCF.

A grant to MAB would violate BCF's terms and conditions for grants because it is not an exempt organization, and it engages in lobbying local officials as a central part of its mission. The Town, however, could serve as an authorized grantee to hold BCF funds as a fiscal agent for MAB. Apparently, there was some discomfort with that approach and sometime in the summer of 2021, the Town approached Harvey Bravman to act as the fiscal agent and recipient of the BCF money held by the Town. Bravman agreed and his 501(c) organization Brookline HUB, Inc. ("HUB") received a check from the Town sometime in August of 2021. Bravman, in turn, wrote a HUB check and sent it to Bonnie Bastien of MAB. Bravman received no benefit from the Transaction and did not charge overhead or require any reporting. Bravman has received support from BCF in the past and has many relationships with the Town, including serving as fiscal agent for local school programs.

Issues.

Under §53A the Town could have given the money directly to MAB. Neither §53A nor Town policies require a recipient of Town expenditures under §53A be a legitimate public charity. But the Town apparently recognized that there would be risk in doing so. Thus, the HUB was enlisted to be a sub-intermediary for the Transaction.

The Town's apparent instincts were correct because serving as an intermediary for the Transaction entailed significant risks to the Town. First, there is an appearance risk. It would be legitimate for someone to ask why the Town would use such a structure unless there was an ulterior motive for doing so. And second, the risk of working with a non-exempt organization that does not have the requirements of transparency that exempt organizations are required to provide in their Internal Revenue Service Form 990 and their Form PC filed with the Non-Profit Organizations/ Public Charities Division of the Attorney General's Office. The information on those forms include: (1) history and nature of the organization, (2) contributions received, and expenditures made, (3) related party transactions, (4) any history of civil or criminal actions against the charity or its officers, (5) solicitation information, and (6) compensation disclosures.

Working with a charitable organization that does not provide such transparency poses many risks to the Town, including “Headline risk” that would result from the disclosure of related party transactions or excessive administrative costs and little money going to charitable purposes or the disclosure of criminal backgrounds of charity leaders or other disclosures.

Conclusion.

The consensus of the Audit Committee was that the Transaction did not include any actions that were unauthorized but that they should not have transpired in the way they did. There does not appear to be any prohibition on the Town acting as an intermediary between an entity like BCF and an entity performing a charitable function like MAB. But the risks associated with such a relationship argues against it. And while §53A does not require that the Town only deal with grantees that are 501(c) charities, the wiser course is to limit the Town’s interactions with charities to those that are 501(c) charities and are current in their tax filings and filings with the Massachusetts Attorney General’s Office.

ⁱ Mass. Gen. Laws, c. 44, Section 53A: Grants and gifts; acceptance and expenditure

An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners.

In the case of grants from the federal government or from the commonwealth, a county or municipality or agency or instrumentality thereof, upon receipt of an agreement from the grantor to provide advance payment or reimbursement to the city, town or district, the officer or department may spend the amount of the advance payment, or the amount to be reimbursed, for the purposes of the grant, subject to the approvals required by this section. Any advance payment or reimbursement shall be applied to finance the grant expenditures; provided, however, that any expenditures outstanding at the close of the fiscal year after the fiscal year in which the grantor approved the agreement shall be reported by the auditor or accountant of the city, town or district, or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor.

Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation.

If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation.

Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.