

Rankin & Taylor

Attorneys at Law

11 Park Place, Suite 914
New York, New York 10007

David@DRMTLaw.com
Phone: 212-226-4507
Fax: 212-658-9480

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Re: Town of Pine Plains Purchase of 7775 South Main Street

Dear Members of Lodge 903:

The Town of Pine Plains is free to buy 7775 South Main Street regardless of any rights the indenture gives the Independent Order of Odd Fellows. The New York State government never intended the Gift and Loan Clause of the State Constitution, Article VII, Sec. 8 to apply to situations such as this one, and courts have not interpreted it to. In fact, courts have held the Clause allows the government to engage in financial transactions with private entities when the subject of such transactions serves a public purpose.

The history of the State working together with private entities to promote the public good is as long as the history of the state itself. For centuries, the state has given or loaned money to private entities in order to support the building of railroads, schools, banks, hospitals, and other institutions that help the state and its residents to thrive. In the mid-19th century, when the New York State government passed amendments to the state Constitution that limited the state's ability to give money to private entities, towns and cities became instrumental in providing financial support to private projects for the public good.

When the Gift and Loan Clause was added to the New York State Constitution in the 1870's, the purpose was not to totally cut off the financial relationship between public and private entities, but to prevent corruption. The members of the 1872 Constitutional Commission wanted to make sure that government officials like Boss Tweed would not be able to use public funds to pay off private citizens and entities who helped them rig elections. The 1894 and 1938 additions to the Clause made it clear that the state and its towns and cities were still allowed to contribute government money to public and charitable institutions. The Clause was simply meant to serve as a mechanism to ensure that the state and its municipalities did not give away all of their money to the private sector. People v. Ohrenstein, 77 N.Y.2d 38 (1990).

In accordance with its history and intent, New York state courts have overwhelmingly interpreted the Gift and Loan Clause in ways that define its scope

narrowly and give deference to the judgment of the state and its municipalities as to what types of financial arrangements are exempted from the Clause. For example, in 2009, the state's highest court held that the Clause was not implicated when a town gave land to a private entity based on an agreement that the entity would pay back the town over 15 years. 10 East Realty, L.L.C Inc. v. Vill. of Valley Stream, 12 N.Y.3d 212, 214 (2009) The court considered the contract to be adequate consideration for the conveyance.

Even more on point with the Odd Fellows controversy is Murphy v. Erie Cnty, 28 N.Y.2d 80 (1971), another case in which the New York Court of Appeals upheld an agreement between a private corporation and a local government. The agreement in question stated that the corporation would donate a parcel of land to Erie County, provided that the county built a stadium on the land. Then the county would either lease the stadium to the company for 40 years, or the company would manage the stadium for 20 years, in return for a percentage of the stadium's profits. Citizens of the county complained about the agreement, arguing that giving the corporation control of the stadium would allow the corporation to use the stadium for its own private benefit. However, the court held that regardless of who controlled the stadium, it would be serving a public purpose by creating a space for public entertainment. Therefore, the Gift and Loan Clause was not implicated.

The Murphy case makes it clear that New York law allows private entities to maintain a presence on land that they have donated to the government, when the property serves a public purpose. The continued use of the land by a private entity does not interfere with the government's right to the land, nor does it create a threat of corruption or harm to the local government's fiscal integrity. Therefore, the Gift and Loan Clause does not apply, and there is no reason why the Town of Pine Plains should not be able to take control of the land granted by the Odd Fellows, even if the Odd Fellows continue to occupy property on the land.

This letter addresses the sole issue of whether the State Constitution, Article VII Sec. 7 categorically bars The Town of Pine Plains purchasing the land, with the deed intact. As we have discussed, there are numerous ways to structure this purchase which would not begin to implicate this clause of the New York State Constitution. We would be more than happy to sit down and discuss these options with the Town Board at their earliest convenience.

Very best regards,



David B. Rankin