
Authorities Budget Office Policy Guidance



No. 15-01

Date Issued: January 13, 2015

Supercedes: New

Subject: Restrictions on Grants and Loans Made by Public Authorities

Statutory Citation: Various Sections of New York State Law

Provision: State and local authorities, as defined by Section 2 of the Public Authorities Law, whether created as public benefit corporations or formed as not-for-profit corporations, have only those powers explicitly granted or necessarily implied by statute. Accordingly, state and local authorities may engage in only those activities and exercise those powers which are expressly authorized in law or which are incidental to performing their statutory purposes.

Authorities Budget Office Policy Guidance: This limitation applies to the power of a state or local authority to award its monies in the form of grants and loans to public or private interests. Such financial assistance is prohibited unless expressly authorized in statute.

A state and local authority (other than an industrial development agency) formed as public benefit corporation may not award grants or issue loans of its own funds unless such power is expressly permitted in its enabling statute. The authority to make grants and execute loans is not an implied power of a public benefit corporation.

An industrial development agency (IDA) may not, under any circumstances, award grants or make loans of its own monies. The New York State Attorney General has opined (Formal Opinion No. 2014-F1) that an IDA does not have the statutory power to provide grants or loans from its own funds to public or private interests. This 2014 Opinion is consistent with the view previously taken by the Office of the State Comptroller (Op. St. Comptr. Nos. 99-4 and 82-360). The Attorney General states that “while an IDA is expressly permitted to *accept* gifts, grants, loans and contributions from various entities and to use such moneys for its corporate purposes, General Municipal Law §858(11), the enabling statutes do not explicitly authorize an IDA to make grants or loans of its money to any type of entity. Nor do we believe that these activities are necessary for an IDA to completely exercise the powers granted by the Legislature.”

The statutory restrictions on a state or local authority’s power to award grants and issue loans is clear and unambiguous. A state or local authority may only accept loans, grants and contributions from federal, state or other public or private sources and expend or pass through those funds consistent with the public purpose of the

authority and statutory or programmatic limitations imposed on the use of those funds.

A state or local authority, unless otherwise empowered under the law, may not grant or loan its monies to public or private corporations, private businesses or interests, civic associations, charitable groups, educational institutions, not-for-profit corporations, or any other social, religious, fraternal or cultural organization.

Moreover, statutory language such as “to do all things necessary or convenient to carry out its purposes”, “to act in the public interest” or “to lessen the burden of government” should not be construed as providing a state or local authority with implied authorization to make grants or loans from its own monies in the absence of clear statutory language. In fact, the Attorney General has stated that such an interpretation “would render meaningless the Legislature’s careful delineation of express powers.”

All state and local authorities which, as a matter of practice or policy, grant or loan their monies to such entities without specific legislative authorization are directed to immediately end such practice or policy so as to comply with applicable state law and the opinions of the State Attorney General and State Comptroller.