

Can CPA Fund Private Projects?

Have you ever wondered if CPA funds can be used to fund projects on privately-owned property? This question comes up frequently for historic preservation projects, such as restoring an historical society's house museum, preserving windows on an old YMCA building, or restoring an old tavern that's now a private residence. The answer is, it depends.

The Community Preservation Act does not prohibit use of CPA funds for projects on privately-owned property. However, the Anti-aid Amendment to the Massachusetts Constitution does prohibit the use of public funds to private entities for private purposes. The Amendment reads:

ANTI-AID AMENDMENT

Mass. Const. Amend. Article 46, § 2, as amended by Article 103

Section 2. No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

Despite the wording of the Anti-aid Amendment above, there is a way to make a grant of public money to private organizations. The key concept to understand is that public funds are prohibited from being used for private purposes. Any expenditure of public funds must be used to advance a public purpose. As the Department of Revenue points out in a February 2007 letter to the Town of Norfolk, the preservation of historic assets are generally understood to have legitimate public purposes. A variety of federal and state programs provide historic preservation grants to private non-profit organizations, but typically the public purpose is served by the acquisition of a historic preservation restriction. Likewise, many CPA communities are now requiring historic preservation restrictions as a condition of funding preservation projects on private properties in order to satisfy the Anti-aid Amendment. The restriction is placed on the deed to the property and would transfer to the new owner should the private entity sell the building, which protects the public investment in the property.

CPA communities use a variety of other tactics to further protect the public investment in private properties. The town of Plymouth has used an agreement that guarantees public access to a building, while Great Barrington has used an agreement that requires the CPA investment to be repaid should the private building be sold. Since the specifics of each situation can vary, your municipal attorney should be consulted to determine if these strategies can replace a Preservation Restriction or should be used in combination with Preservation Restriction. The Community Preservation Committee should consider seeking a written opinion on funding private projects before making a recommendation.

The bottom line is this: CPA funds may be able to fund a project on private property, but only if the project is advancing a public purpose, such as the municipality acquiring a deed restriction, providing public access to the property where there was none before, or some other public benefit recommended by your municipal counsel.