

On Feb 16, 2011, at 6:49 PM, Stephanie Stevens wrote:

Dear Joni:

You asked NPLAN whether produce grown in a community garden on municipal property (and perhaps also on school property) could be considered a public gift. You also wanted to know the definition of public gift. As you know, NPLAN does not give legal advice but I can certainly provide you with information to help clarify this topic.

The California constitution prohibits government from making or authorizing any gift of public money or thing of value to any individual, municipality, or corporation. (Cal. Const. Art. XVI, §6.) The term "gift" includes all appropriations of public money for which there is no authority or enforceable claim to the funds. California courts have consistently held that money spent for public purposes is not a gift even though private persons may benefit. (See, e.g. Teachers' Retirement Board v. Genest, 154 Cal.App.4th 1012 (2007)) California courts have also held that public health is a legitimate interest of government, and therefore money spent to promote public health is an expenditure for a public purpose. (See, e.g. Community Memorial Hospital of San Buena Ventura v. County of Ventura, 50 Cal.App.4th 199 (1996))

In this case, a strong argument can be made that a community garden located on municipal property is not a gift of public funds because community gardens are for public purpose, use, and benefit. Community gardens are by definition open to the community and serve the public purpose of increasing the public's access to healthy foods, which promotes the health of citizens and improves the local food system. Community gardens also foster community food security by supplying the fresh produce that is often absent from urban food environments and decreases the amount of food that needs to be brought into the city from great distances, reducing the carbon fuel used within the food system. Finally, community gardens provide an added opportunity for residents to engage in moderate physical activity. Given these benefits, a court would likely find the program promotes the public's health and welfare and does not constitute an unlawful gift of public funds.

Indeed several California cities have community gardens on municipal property. San Francisco's Department of Parks and Recreation supports and manages 35+ gardens on city-owned property. (<http://sfrecpark.org/CommunityGardens.aspx>) Palo Alto (<http://www.cityofpaloalto.org/living/news/details.asp?NewsID=457&TargetID=41>) and Sacramento(http://www.cityofsacramento.org/parksandrecreation/parks/community_garden.htm) also have and run community garden programs on municipal property.

I hope this information is helpful to you. Should you have any other questions or need further clarification, please do not hesitate to contact me.

Kind regards,

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