MEMORANDUM

To: Marti Brown, City Manager, City of Willows
From: Carolyn Walker and Caitlin Smith
Date: November 16, 2023
Re: Willows Law Enforcement Services Memo

The City of Willows has requested clarification on whether the Sheriff’s Department providing Law Enforcement services without payment would constitute a gift of public funds. The following memorandum will discuss these issues.

Gift of Public Funds

In an unpublished case, the Court of Appeal held that the performance of municipal functions on behalf of a city is a public purpose a county may undertake without constituting an impermissible gift of public funds. The Court explained:

Article XVI, section 6 of the California Constitution provides that the Legislature has no authority “to make any gift or authorize the making of any gift, of any public money or thing of value to any ... municipal ... corporation.” Although it expressly prohibits only the Legislature from making gifts of public funds, that provision and its predecessors have long been held to prohibit contributions of funds from one public agency to another, including a contribution from a county to a general law city, unless the contribution is for a public purpose which benefits the county. (Sturgeon v. County of Los Angeles (2008) 167 Cal.App.4th 630, 637; Auerbach v. Board of Supervisors (1999) 71 Cal.App.4th 1427, 1441.) The Supreme Court has stated the rule as follows: “[A] contribution from one public agency to another for a purely local purpose of the donee agency is in violation of the constitutional prohibition, but ... such a contribution is legal if it serves the public purpose of the donor agency even though it is beneficial to local purposes of the donee agency. [Citations.]” (Santa Barbara County Water Agency v. All Persons (1957) 47 Cal.2d 699, 707; see also City of Marina v. Board of Trustees of California State University (2006) 39 Cal.4th 341, 362, fn. 13.)
It is well settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose. If they are to be used for a public purpose, they are not a gift within the meaning of this constitutional prohibition. [Citation.]’ [Citation.]’ (Jordan v. Department of Motor Vehicles (2002) 100 Cal.App.4th 431, 450.) ‘Importantly, [t]he determination of what constitutes a public purpose is primarily a matter for the Legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis. [Citations.]’ [Citation.]’ (Sturgeon v. County of Los Angeles, supra, 167 Cal.App.4th at pp. 637–638.)

Article XI, section 8, subdivision (a) of the California Constitution states that “[t]he Legislature may provide that counties perform municipal functions at the request of cities within them.” Section 57384 provides that upon the incorporation of a new city from previously unincorporated territory, the county board of supervisors “shall continue to furnish, without additional charge, to the area incorporated all services furnished to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation became effective or until the city council requests discontinuance of the services, whichever occurs first.” (§ 57384, subd. (a).) The county may also resolve to continue to provide such services beyond the fiscal year during which the incorporation became effective, at the request of the city council. (§ 57834, subd. (c).) Services voluntarily provided pursuant to subdivision (c) are provided “without charge.” (§ 57834, subd. (c).)

Both article XI, section 8 and section 57834 reflect a policy of this state that performance of municipal functions on behalf of a city is a public purpose a county may undertake. Consequently, the performance of such functions by a county on behalf of a city cannot be deemed a gift within the meaning of article XVI, section 6. Accordingly, if a county may contribute funds to enable a newly incorporated city to provide necessary services rather than providing the services on the city’s behalf, doing so does not constitute a gift within the meaning of article XVI, section 6. As we discuss below, however, the Cortese–Knox–Hertzberg Act does not authorize an allocation of funds for that purpose; rather, it authorizes the county only to provide services on behalf of the new city. Consequently, the allocation of funds does violate article XVI, section 6.

*Ste. Marie v. Board of Sup’rs for County of Riverside*, No. E047311, 2010 WL 2473244, at *2-3 (Cal. App. 4th June 18, 2010). While this opinion is not binding, it provides insight into how the courts might address this question. Because providing emergency services would serve a public purpose, it does not appear that there would be an issue with the Sheriff’s Department providing services to the city for purposes of a gift of public funds.