



# QUESTIONS & ANSWERS:

## Attorneys Answer CARES Act Use Questions from Townships

These answers were submitted for a CARES Act webinar held by the OTA on September 18, 2020. Answers were prepared by Baker, Dublikar, Beck, Wiley & Mathews – Attorneys at Law.

### A helpful note from the attorneys:

“If an expense has these five elements, it is likely an expenditure that is eligible for CARES Act funding:

1. The expense is related or connected to the COVID-19 emergency.
2. The expense is “necessary”.
3. The expense is NOT filling a shortfall in government revenue.
4. The expense is NOT funded through another budget line-item, allotment or allocation, as of March 27, 2020.
5. The expense would NOT have existed without (“but-for”) COVID-19, or would have been for a “substantially different” purpose.”

QUESTIONS	ANSWERS
(Qs were submitted to the OTA’s CARES Act webinar on Sep. 18; answers were given by Baker, Dublikar, Beck, Wiley & Mathews – Attorneys at Law. References to “Greg” or “Attorney Beck” refer to Greg Beck.)	
CLEANING/SANITIZATION	
1. Would the purchase of a backpack blower to clean out a garage for meetings be a legitimate expense? We cannot hold meetings in our chambers due to the area being too small to comply with social distancing requirements.	Yes, this would be a legitimate use of CARES Act money as it is a COVID-19-related expense related to the sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
2. We have a community building that we have had to close to the public and we have two questions. (A) We are looking at having a cleaning company to come in to do a thorough sanitizing and deep clean; would this be an acceptable expense? (B) Also, we have installed a door lock to limit access to the building; you must be buzzed in by staff. Would this be a qualifying expense?	(A) This would be considered a legitimate use of CARES Act money. (B) This would not be considered a proper use of CARES Act revenue.
3. Our township has budgeted \$3,000 for the 2020 year for cleaning of our offices. Our regular cleaning company has been closed for six months and we hired another individual during that time. Once the \$3,000 budgeted has been spent, then can we use CARES dollars to pay for cleaning of the office?	Yes. Payments under the CARES Act can be used to cover expenses that were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020. If the payment is used to cover the amount that was not accounted for in the budget, then it is an acceptable expenditure.



<p><b>(Cleaning/Sanitization continued)</b></p> <p>4. If we buy PPE and disinfectant supplies, how far out can we buy it, i.e., six months, one year, etc.?</p>	<p>Per Treasury Guidance (<a href="#">linked on the OTA's website</a>), the money is to be used for COVID-19 related expenses. The PPE purchased must be for the current COVID-19 pandemic.</p>
<p>5. Can the CARES money be used for carpet cleaning or replacement of old carpet? What about replacing carpet with a hard surface more conducive to cleaning?</p>	<p>The cleaning of carpet would be considered a legitimate use of CARES Act money as it is a COVID-19-related expense related to the sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.</p> <p>The replacement of carpet with carpet or another material could be a logical expense, as there is a need to sanitize public places. What is the science behind replacing or changing from carpet to tile or laminate? If it is simply that it is easier to clean than carpet, that is not a qualifying rationale. If there is a science behind how carpet traps or impacts air quality, then there is a direct tie to COVID-19.</p>
<p>6. Can the funds be used for a washer and dryer (with a sanitizing cycle) in the fire department?</p>	<p>Yes, if the washer/dryer were dedicated to washing and sanitizing work clothes and uniforms, and there was a documented need for this additional sanitation given the volume of work and potential spread.</p>
<p><b>PAYROLL/PERSONNEL</b></p>	
<p>7. Can the funds be used to pay hourly workers with COVID-19-related responsibilities that are still working within their budgeted hours? Example: an employee works 20 hours a week, and 5-10 hours is now spent on COVID-19-related activities. However, they are still only working 20 hours and no additional unbudgeted hours have been worked. Can it be used on parks employees' overtime due to extra cleaning of park facilities?</p>	<p>Yes. If the workers are safety forces, certainly; if the workers are not safety forces but dedicate part of the time to COVID-19 responses, then those hours may be paid with CARES Act monies. You will want to clearly document time spent on those activities.</p>
<p>8. Can you provide additional guidance on public safety personnel expenditures and what may be paid for with CARES monies? Is payroll for EMS covered? Can you explain why the police and safety forces are covered even if they were included in the budget on March 27?</p>	<p>Safety personnel are covered: payroll, benefits, overtime, and hazard pay, unless the Board determines that the employee's actual service is not substantially dedicated to COVID-19 responses.</p> <p>EMS would be covered per the definition of safety services.</p> <p>Please see the Treasury Guidance updated on September 2, questions 11 and 47.</p>



<b>(Payroll/Personnel continued)</b>	
9. Does payroll include the employers share of withholding?	The Treasury Guidance provides information regarding costs associated with payroll and benefits, as well as hazard pay for qualifying employees. Specifically, please see questions 2, 3, 11, 14, 21, 22, 38, 48 of the Guidance.
10. Since Fire/EMT payroll is a covered expense, can we reimburse the fire department for payroll expense that was paid out earlier in the year but after the March date?	Yes - the eligible period is March 1 - December 30.
11. Is payment of sick leave for police officers quarantined due to COVID-19 exposure or a positive test a good example of an allowable cost?	Yes - this is now listed in updated Treasury guidance.
12. Instead of back-paying EMS workers, can we just give a bonus check to each EMS employee involved in going out on the calls? Can this bonus just be a set fee of \$500 to these employees?	A bonus check is not permitted per the US Treasury Guidance. The Guidance provides information regarding costs associated with payroll and benefits, as well as <i>hazard pay</i> for qualifying employees. Specifically, please see questions 2, 3, 11, 14, 21, 22, 38, 48 of the Guidance.
13. Would a road worker that was required to work during the shutdown be eligible for payroll reimbursement if they had to take off work due to COVID-19 to take care of children that couldn't go to school due to the shutdown?	Per the Treasury Guidance, a township can use the money to pay for employee leave for reasons outlined in the Families First Coronavirus Response Act (FFCRA).
14. When the Governor originally issued the lockdown order, our Trustees required employees to stay home for two weeks with pay. Do I understand that this expenditure would qualify as it was to "protect our employees"?	Please see Treasury Guidance issued on September 2, specifically questions 11, 22, 30
<b>FACILITIES</b>	
15. If we lease part of our hall to another 501-C3, can we utilize money for lost rentals and staff salary?	No - this is considered revenue replacement.
16. We are hoping to make a couple of larger expenditures. (A) Can we buy a keycard access system to our township buildings so that access is restricted and less door touching? (B) Can we buy an electronic sign for the township to advertise COVID information, etc. this is obviously used for other things, but for now it would concentrate on "public health information". (C) Can we use it for non-touch faucets and auto flushing toilets, etc. to prevent touching?	(A) There have been several townships that have purchased keyless, touchless systems for doors, water fountains and sinks. <a href="#">Please see the list compiled by the OTA</a> , as it references townships that have used the money for certain instances. They would be a good resource for you. (B) This would not be considered a proper use of CARES Act revenue. (C) Please see answer to (A).



<p><b>(Facilities continued)</b></p> <p>17. Would replacing the existing furnace with better filtering system at the township building be a legitimate use? Upgrades to the HVAC system? What about replacing a boiler with forced air/heating system?</p>	<p>You will want to demonstrate why a better air filtration system or new heating system is needed and how that will help combat the spread of COVID-19. Upgrades to an HVAC system are probably not a legitimate use unless the system filters the air through a filtering system or air exchanger. This is fact-specific to each township and a legal opinion should be obtained. You will need to document, document, document.</p>
<p>18. We are in an old building and cannot open windows for fresh air. Can it be used for new windows?</p>	<p>This would not be considered a proper use of CARES Act revenue.</p>
<p>19. Can CARES Act money be used to purchase a generator for a police station that has no phone or internet during power outage, and for a town hall that will be needed due to social distancing in the event of the emergency?</p>	<p>This is going to be fact-specific to each township. You must show that it is a need directly related to COVID-19. It is likely to be considered an indirect cost - the need is for the future, not an immediate, thus it could potentially raise scrutiny.</p>
<p>20. We are thinking of putting motion detection light switches in areas the public uses.</p>	<p>Yes, this is an example of necessary safety costs directly related, thus “due to” COVID-19.</p>
<p>21. Can you use these funds for a camera system to monitor social distancing at a township park?</p>	<p>This would not be considered a proper use of CARES Act revenue.</p>
<p>22. Can the funds be used for renovation of a fire station bathroom to create an ADA-compliant shower room/decontamination room? What about installation of a bathroom in a facility that does not have one, such as a township garage?</p>	<p>Yes, if the need for sanitizing is documented based on the volume of employees and potential exposure; an installation of a new bathroom may be questionable unless it was for the dedicated use of sanitation to prevent the spread.</p>
<p>23. Can the funds be used for upgrades to the township water system?</p>	<p>Without more information, no.</p>
<p>24. Can the funds be used for aluminum bleachers at a ball field or plastic picnic tables (rather than wood)?</p>	<p>This may not necessarily be a convincing protection/need. What is the science behind replacing or changing from wood to aluminum or plastic? If it is simply that it is easier to clean than wood, that is not a qualifying rationale. If there is a science behind how wood traps or impacts the spread of COVID-19, then there is a direct tie to COVID-19. You will need to document, document, document.</p>
<p>25. Can the funds be used for an LED message sign board?</p>	<p>This would not be considered a proper use of CARES Act revenue.</p>



<p><b><i>(Facilities continued)</i></b></p> <p>26. Can the funds be used for construction of open-sided structures to accommodate social distancing, such as a shelter house?</p>	<p>Yes, with good documentation as to the need.</p>
<p><b>SUBGRANTING</b></p>	
<p>27. Can you provide a few examples of subgrant opportunities that will allow us allocate funding appropriately to help meet local needs?</p>	<p>Please review the list that was included in the CARES Act packet mailed to township fiscal officers. It is also available on the OTA’s website.</p>
<p>28. If we subgrant, what is the process that we use to monitor whether their expenditures are legitimate use of funds under CARES? If expenses are later found not to be legitimate, who is responsible the subgrantor or subgrantee?</p>	<p>The subgrantor is responsible (i.e. the township). You will want to work with legal counsel to establish procedures for your program.</p>
<p>29. Can grantor subgrant to grantee funds that the grantee has already spent due to COVID-19?</p>	<p>Yes.</p>
<p>30. Could a volunteer fire association the township has contracted with be the recipient of monies via subgranting?</p>	<p>Yes, a volunteer fire association could be a subrecipient if they are spending the funding on eligible expenses.</p>
<p>31. Can we give a donation to a fire/EMS department that we subcontract to for an EMS vehicle?</p>	<p>The township can give a donation to a fire/EMS that it subcontracts with, but the purchase of an EMS vehicle, like other vehicles, is fact specific. Because the township is ultimately responsible for that money, the township and subgrantee would need to demonstrate that the new vehicle is tied to COVID-19, provide the science behind the decision, and explain why it is necessary. The township or fire/EMS department should get a legal opinion stating why it is a COVID-19 expense.</p>
<p>32. Are small businesses eligible to receive funds from the CARES Act? A nearby city is planning to use these funds for small business assistance. Is this a permissible use of the funds? Similarly, what economic development processes, if any, might be eligible?</p>	<p>Yes, small business grants are allowable. Please refer to the Treasury Guidance. The township would have to set up rules and regulations for the disbursement of such grants.</p>
<p>33. Can we give assistance to a plaza owner so they can market that the plaza businesses are open and following COVID-19 guidelines?</p>	<p>Yes, assistance for marketing is allowable per the Treasury Guidance. Specifically, please see question 45 of the Guidance.</p>
<p>34. May townships encumber CARES funding to address social needs in the townships, i.e., food banks, utility payments, rent, etc.?</p>	<p>Yes, the OTA is aware of townships that are subgranting funds for this purpose.</p>



<p><b><i>(Subgranting continued)</i></b></p> <p>35. The school district that serves our township residents is not physically located in our township. It sits in the neighboring township. Can we subgrant to this school?</p>	<p>Yes.</p>
<p>36. If we return unused funds to the county auditor, couldn't the schools or fire departments apply for "unused" funds and get it directly from the county rather than the township sub-granting it?</p>	<p>No, only local governments (counties, municipalities, townships) receive funds directly. When the funds are returned to the county auditor, they are redistributed to other jurisdictions that have exhausted their funds. Schools and fire departments may only receive funds from one of these local governments.</p>
<p><b>SAFETY SERVICES</b></p>	
<p>37. Are there any provisions for purchase of police cars due to possible exposure in current vehicles? Is the purchase of a police car that is designated for transporting COVID-19 positive individuals an acceptable use of funds?</p>	<p>The purchase of vehicles is fact-specific for each township. The township would need to demonstrate a tie to COVID-19, provide the science behind the decision, and explain why it is necessary. The township should get a legal opinion stating why it is a COVID-19 expense.</p>
<p>38. Can the funds be used for an ambulance? Either to supplement or replace an old unit, or an additional unit for increased COVID-19 cases?</p>	<p>Probably. Medical transportation is a recognized expenditure under the Treasury Guidance but the need should be critically documented; there may be components that enhance the safety features and that would certainly be covered. If the need is because of volume of calls and inability to respond, then a new squad may be appropriate. Documentation is the key since this will be a red flag.</p>
<p>39. Can you purchase fire/ems turnout gear due to COVID contamination? FF/Medic only have one set. At an accident with a COVID-19 patient, it becomes contaminated. They would need a new set while the other is being cleaned.</p>	<p>This would be considered a legitimate use of CARES Act money.</p>
<p>40. Can our township fire department purchase MARCS radios for the department for better communication? We have been purchasing a couple at a time over the years because of the expense.</p>	<p>This would not be considered a proper use of CARES Act revenue.</p>
<p>41. Would uniforms for the fire dept/first responders be an appropriate use of CARES Act funds?</p>	<p>Yes, but you must ask the question: for COVID-19, would the township fire department need the uniforms? If it is for turnout gear, there is a logical tie to COVID-19 expense. If it is simply to have new uniforms, then it is not an appropriate use.</p>



<b>MISCELLANEOUS</b>	
42. Can the money be used to buy hazard suits for the road department employees?	This would be considered a legitimate use of CARES Act money.
43. As a small township, can we provide masks to our population?	Yes, you may purchase PPEs and distribute them to your residents.
44. Can you use CARES Act money for biologists/scientists? (To justify uses for sanitation, for example.)	This could be considered an appropriate use of the funds, as the guidance would provide you with reasoning as to the uses of the funds.
45. Could CARES Act money be applied to architectural drawings for administrative building COVID-19 upgrades?	Yes, as this is similar to consultants and legal advice.
46. Can we buy document scanning equipment or service to eliminate contaminated exposure of paper copies?	This could be a logical expense, as there is a need to limit surface contact in shared environments. What is the science behind the contamination of paper products? If there is a science behind how paper copies trap the virus, then there is a direct tie to COVID-19. A township should seek a legal opinion and document, document, document.
47. Our county's IT coordinator wants to use CARES funds to update wiring and provide more remoting capabilities. This was discussed prior to COVID-19; would this be eligible?	Yes, if it was simply discussed beforehand but there were no plans or budgeting in place, and the need has become a priority since COVID-19. This is an example of necessary safety costs due to COVID-19.
48. Can the funds be used for purchase of an audio/visual system for meetings? Are there limits to IT expenditures?	Yes, but the costs must be reasonably necessary—this means there must be some discretion in the use of the funds; the cost should be documented, and if extraordinary, there must be backup for the cost.
49. Can the funds be used for installation of hot spots for virtual learning?	Yes, if the installation is to assist those working at home or who otherwise lack Wi-Fi access because of COVID-19.
<b>CARES ACT LOGISTICS &amp; REQUIREMENTS</b>	
50. In a PowerPoint published by the OBM, Criteria #2 Costs not Accounted for in the Budget states, "a cost meets criteria if it cannot lawfully be funded using a line item." Many costs are lawful using a particular line item, however, were not planned. Could you explain what is meant by the word lawful?	The Treasury Guidance provides information regarding lawful expenses. Specifically, please see question 55 of the Guidance.



<p><b><i>(CARES Act Logistics and Requirements continued)</i></b></p> <p>51. I would like to know if there has been an extension of the deadlines for appropriating and spending the CARES ACT money.</p>	<p>Yes, HB 614 passed the General Assembly on Sept. 23 and it extends the deadline to Nov. 20 for use or encumbrance of CARES money (previous deadline was Oct. 15). Additionally, entities that are given redistributions after Nov. 20 will have until Dec. 30 to spend the funds and will have until Feb. 1, 2021 to rectify accounts and return unused funds to OBM.</p>
<p>52. What does it mean to encumber the expense by Dec. 28? If I order something and parts are backlogged until January 2021, is this going to be covered with the CARES Act funding? I will not be paying a final bill until the full services are received.</p>	<p>Expenses must be encumbered by Nov. 20, as the deadline was extended in HB 614 (see Question #51). Encumbered means obligated for an expense, but the expense does not necessarily need to be paid. Expenses must be paid for by Dec. 30 (i.e. funds out of accounts).</p>
<p>53. Can we enter a contract now and obligate ourselves before the deadline with the payment being made after the deadline and comply?</p>	<p>You can obligate the township for expenses to be paid after Nov. 20, but funds must be expended and out of your account by Dec. 30 (per federal law as of today).</p>
<p>54. What if something purchased is on back-order? Would it be covered if the final payment is not made before Dec. 30, even though the expense is encumbered on Oct. 6, 2020?</p>	<p>This response is from OBM in response to a similar question posed by a township:  <i>“In regard to work that is not completed by December 30, the Treasury Guidance provides some flexibility for the delivering of goods and performance of services after December 30 (see Treasury Guidance). The key is that the contract needs to require the goods or performance of services by December 30, 2020. If the vendor fails to complete delivery by December 30 and the delay is due to circumstances beyond the recipient’s control, it is allowable.”</i></p>
<p>55. Can you explain reimbursements vs. future expenses?</p>	<p>Yes. Payments under the CARES Act can be used to cover expenses that were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.</p>
<p>56. Given that the time frame is very short, what happens to the money should the township choose not to use it?</p>	<p>It will be redistributed to other entities in the county. If they are not able to spend it, it will go back to the federal government.</p>
<p>57. Can you briefly discuss who reviews expenditures (i.e. role of county prosecutor/legal counsel on the front end and auditor on the back end)? What happens if expenditures are deemed inappropriate?</p>	<p>The state auditor will conduct a review during the normal audit cycle. If the expenditures are not covered, they will have to be paid back to the state; the state is ultimately responsible to the US Treasury for the money and expenditures.</p>