School District Fundraising and School District Support Organizations: A Brief Overview

Drafted by:
Anthony W. Contente-Cuomo
Udall Shumway PLC
School District Fundraising

- School Districts are generally restricted to only doing that which is permitted or granted by statute. Campbell v. Harris, 131 Ariz. 109 (App. 1981).

- Fundraisers should be sponsored and conducted by the school support organizations or by the student clubs themselves; not by the School District.
Statutes Affecting School District Fundraising

• A.R.S. § 15-341(A)(14) provides a School District may receive money in the form of gifts, donations, and devises.
• A.R.S. § 15-341(A)(19) provides that School Districts may receive money from auxiliary operations, which is defined in A.R.S. § 15-1125 as monies raised in pursuance of and in connection with all activities of school bookstores and athletic events.
• A.R.S. § 15-341(A)(20) provides that Districts may receive miscellaneous monies.
• A.R.S. § 15-342(24) authorizes School Districts to assess reasonable fees for optional extracurricular activities, which are defined as optional, noncredit, educational or recreational activity that supplements the education program of the school, whether offered before, during or after regular school hours.
Gifts and Donations

- A School District can accept gifts, donations, and devises.
- A School District can publicize the need for gifts, donations, and devises as an implied authority based on its inherent authority to receive such funds.
- Practices should be limited to utilizing standard resources such as School District publications and websites.
Auxiliary Operations

• School Districts are allowed to raise money “in pursuance and in connection with all activities of school bookstores and athletic events.” A.R.S. § 15-1125.

• Athletic events could involve ticket, food, and athletic merchandise sales.

• Bookstore activities could potentially include books, bookmarks, magazines, calendars, and anything else typically found in a bookstore.
Auxiliary Operations

• Remember that fundraising efforts relating to auxiliary operations require Governing Board approval in advance. A.R.S. § 15-1125.
Extracurricular Activities

• School District’s can charge fees for any optional, noncredit, educational or recreational activity that supplements the education program of the school. A.R.S. § 15-342(24)
• The fees must be approved during a Governing Board meeting after notice is provided to all parents of students enrolled in the School District.
• Fees cannot exceed actual costs of the activity.
• The Governing Board must authorize principals to waive the fee if it creates an economic hardship.
• Cannot charge a fee for use of computers.
Permitted Traditional School District Fundraising Activities

- Book Fair - A.R.S. § 15-1125
- Student Bake Sales - A.R.S. § 15-1125
- Charitable Contributions - A.R.S. § 15-341(A)(14)
- Dance/Family Event Ticket Sales - A.R.S. § 15-1125 or A.R.S. § 15-342(24)
Prohibited Traditional School District Fundraising Activities

- Raffle – A.R.S. §13-3302
- Bingo - A.R.S. §§ 5-401, 5-401, & 5-413
- Discount Card Sale
- Catalog Sales
- Silent Auctions
- Craft/Rummage Sales
- Golf Tournaments
School District Support Organizations

• A private School District Support Organization is not as severely limited by statute in its fundraising efforts.

• A School District Support Organization can donate the proceeds raised to the School District
Types of School District Support Organizations

- Education Foundations
- Booster Clubs
- PTOs
## Education Foundation

<table>
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<tr>
<th>What is it?</th>
<th>What does it do?</th>
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<tr>
<td>• An Education Foundation is an organization, typically a non-profit corporation, founded by private individuals for the purpose of promoting the overall educational mission of a local School District.</td>
<td>• Promote the District within the community</td>
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<td>• Sponsor and administer fundraisers</td>
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<td>• Donate to the District</td>
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<td>• Award gifts, grants, and scholarships to teachers and students</td>
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**PTO**

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<tr>
<td>• A PTO (Parent-Teacher Organization) is an organization, preferably a non-profit corporation, organized by a group of parents and teachers to provide support for a specific school within the District.</td>
<td>• Promote the school within the community</td>
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<td>• Encourage communication between the school, parents and teachers</td>
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<td>• Sponsor and administer fundraisers and other events</td>
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<td>• Donate to the school</td>
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# Booster Club

**What is it?**

- A booster club is an organization, preferably a non-profit corporation, typically founded by a group of parents to support a specific activity (athletic team, extracurricular club or student organization) at a school.

**What does it do?**

- Promote the activity within the community
- Encourage communication between parents and the activity’s director (sponsor, coach, or teacher)
- Organize and coordinate parental involvement with the activity
- Sponsor and administer fundraisers and events for the activity
- Donate to the School District for the activity
• Each one of these different types of School District support organizations should be a stand-alone non-profit corporation or under an umbrella non-profit corporation.

• Not all entities calling themselves foundations or even non-profits are actually non-profit corporations.

• Always check - Look them up on the Arizona Corporation Commission’s website.
Why should these organizations be non-profit corporations?

• Taxes and Tax I.D. Numbers:
  – These organizations cannot use the District’s tax identification number for any purpose (such as opening a bank account or fundraising)
  – If they are not non-profit corporations, then donations to these organizations will not be tax deductible (the District’s charitable status does not flow through)
  – If they are not non-profit corporations, someone (the parents?) will have to pay taxes on the organization’s income (including all of the money collected through fundraising)
Arizona Constitution’s Gift Clause

Article 9, Section 7 of the Arizona Constitution provides:

“Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for the investment of the monies in the various funds of the state.”
Can a School District form a Non-Profit Corporation?

• Consider the Gift Clause prohibition:

A political subdivision (such as a School District) shall not “. . . become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law. . .”
Can a School District form a Non-Profit Corporation?

• “School boards have only the authority granted by statute, and such authority must be exercised in a manner permitted by statute.” *Campbell v. Harris*, 131 Ariz. 109 (App. 1981).

• The answer to this question depends on whether there is a statute authorizing a School District to form a non-profit corporation.
A.R.S. § 11-952

• A.R.S. § 11-952 authorizes two or more public agencies (including School Districts) to “form a separate legal entity, including a nonprofit corporation, . . .”

• It requires an intergovernmental agreement between two public agencies.

• It also limits the non-profit corporation to the exercise of powers that the public agencies themselves could independently exercise.
So can a School District form a School Support Organization?

• Other than as authorized by A.R.S. §11-952, a School District cannot form or be a member in a non-profit corporation (or any other company or legal entity).

• A School District cannot form a separate legal entity to take action that the School District itself is not statutorily authorized to take.

• So the answer to this question is No.
Can a School District assist with the formation of a School Support Organization?

• Consider the Gift Clause Prohibition:
  A political subdivision (such as a School District) shall never “. . . give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation. . . .”

• The answer to this question may depend on what “assist” means.
• Helping to pay for the costs of incorporation?  
  **No.** - Utilizing public monies to assist with the organization’s incorporation or formation costs would violate the Gift Clause.

• Paying for or providing CPA or legal services necessary for formation?  
  **No.** - Paying for or providing CPA or legal services to a private entity would violate the Gift Clause.
• Drafting the Articles of Incorporation? **No.** - Spending a District employee’s time to draft legal documents for a private entity would violate the Gift Clause (in addition to just being a really bad idea).
So what can a School District do?

- The School District may provide guidance for establishing and operating school support organizations, clarifying the relationship between such support organizations and the School/District administration, and requiring adherence to School District policies.
So what can a School District do?

• The School District may require school support organizations to be recognized 501(c)(3) non-profit corporations or covered under a qualified umbrella non-profit corporation.

• The School District may require all school support organizations to follow District policies and procedures, such as:
  - facility rental policies
  - gift and donation policies
  - staff ethics policies
  - insurance requirements
  - conflict of interest policies
  - technology use policies
After Formation

• After a school support organization is formed, can District employees or Governing Board Members serve on the support organization’s board?
• **Not a best practice.**
  – Governing Board Members would have a conflict of interest for any agenda items relating to that support organization.
  – Also, a School District Governing Board cannot appoint members to a private organization’s board.
  – Employees can serve on the organization’s board, but only on their own time and without expending any District resources.
  – Employees must avoid giving the impression that they serve “on behalf of” the School or District.
Activity Sponsors

• The school employee sponsoring a club or activity (teacher, coach, band director, etc.) should not serve on the Booster Club Board for that activity.

• Doing so creates a conflict of interest and gives the appearance that the District is directing the activities of the private organization.
Can a School District perform services for its school support organizations?

• Even if the support organization paid the District (at fair market value) for those services (as required to avoid a Gift Clause violation), there is no statutory authority for a School District to sell its services to a private entity.
Can a School District perform services for its school support organizations?

• Per A.R.S. §15-1108, School Districts may provide District services to other School Districts, charging users on a cost reimbursement basis, but this statute does not authorize selling those District services to private entities.
So what can a School District do with and for its support organizations?

• Facility Use Agreements
  – A.R.S. §15-1105 permits a School District to “lease school property, including school buildings, grounds, buses and equipment, to any person, group or organization for any lawful purpose, including recreational, educational, political, economic, artistic, moral, scientific, social, religious or other civic or governmental purpose in the interest of the community, including extended day resource programs.”
So what can a School District do with and for its support organizations?

• The District is required to charge a “reasonable use fee,” set by the Governing Board, and lessees must provide proof of adequate liability insurance.
Uncompensated Use of School Property

• Per A.R.S. §15-1105(B), the governing board may permit the uncompensated use of school property “by any school related group . . . or by any organization whose membership is open to the public and whose activities promote the educational function of the School District.”
Uncompensated Use of School Property

• The Governing Board, in an open meeting, must find in good faith that the school support organization meets these criteria.

• The school support organization would still need to provide proof of liability insurance.

• The District cannot purchase liability insurance for the school support organization or extend its own insurance to such organizations (this would violate the Gift Clause).
Donate Surplus Equipment

• A.R.S. §15-342(18) permits a District governing board to “donate surplus or outdated learning materials, educational equipment and furnishings to nonprofit community organizations where the governing board determines that the anticipated cost of selling the [materials] equals or exceeds the estimated market value of the materials.”
Donate Surplus Equipment

• Assuming the school support organization is a non-profit corporation (as it should be), it would qualify to receive these materials.
Donate Surplus Equipment

• The Governing Board must, in an open meeting, determine that the cost of selling the materials is equal to or more than the estimated market value of the materials, explaining the objectively reasonable basis for its determination.
Donate Surplus Equipment

- The District would need to make a good faith effort to determine market value (i.e., searching on online auction sites, using IRS guidelines, or obtaining an appraisal), and include in its determination the costs of selling the materials (i.e., commissions, appraisals, advertisement, transportation, and/or refurbishment).
Comingling Finances

• School support organizations are private entities. They are not part of the District.
  – The District cannot manage the monies of a private entity.
  – The District cannot deposit the private entity’s monies into the District’s accounts.
  – The District cannot co-mingle private monies with public monies in its accounts.
Coordination

Coordination with school support organizations is necessary and expected, but it is important that everyone recognize and maintain the separate identities of the school Districts and such organizations.
Coordination

• Just as the District should not be paying for the support organization’s expenses, the support organization should not be directly paying District employees or District expenses.

• School support organizations may jointly participate in events with student organizations. But any funds raised through such joint activity must be allocated proportionately to the appropriate student activities fund. See Attorney General Opinion I84-032.
# Coordination

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<th>Best Practice</th>
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<td>• Boosters charge fees for a student’s participation in an extracurricular activity.</td>
<td>• All extracurricular activity fees are charged by and paid to the District. See A.R.S. §15-342(24)</td>
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<tr>
<td>• Boosters pay stipends or salaries to District employees or their relatives</td>
<td>• Boosters donate monies to the District and designate the purposes for those donations.</td>
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<tr>
<td>• Boosters pay the direct expenses of the activity (equipment, consultants, travel, competition fees, etc.)</td>
<td>• Boosters donate monies to the District and designate the purposes, or donate the actual equipment to the District.</td>
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<tr>
<td>• Foundation donates monies to the District for student scholarships.</td>
<td>• Foundation scholarship monies are paid directly out of Foundation accounts.</td>
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Disclaimer

• This presentation and related handout is for informative purposes only and should not be used in place of legal advice for specific situations.
Anthony W. Contente-Cuomo

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UDALL SHUMWAY PLC
1138 North Alma School Road, Suite 101
Mesa, Arizona 85201
acc@udallshumway.com | 480-461-5374
www.udallshumway.com