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## In Times of Budgetary Shortfalls, School Districts Turn to Fund-Raising

During these difficult financial times, school districts are turning to alternative sources of revenues, including various methods of fund-raising, to supplement the traditional funding from federal, state and local governments. In order to assist school districts with their fund-raising efforts, we summarized below some of the key legal requirements in this area.

### FUND-RAISING: In General

The California Education Code places specific limitations on public school district fund-raising activities in the following ways:

- Education Code sections 48932 (K-12) and 76062 (community colleges) grant the governing board authority to permit fund-raising during and after school hours, among other activities;
- Education Code section 51520 (K-12) prohibits teachers or others from soliciting students during the school day or one hour before or after school **unless** the solicitation has been approved by the governing board **and** is for either an organization under the control of the district or is a nonpartisan, charitable organization; and
- Education Code section 51521 (K-12) prohibits individuals without the approval of the governing board from making solicitations on behalf of the school district.

According to California's Fiscal Crisis and Management Assistance Team<sup>1</sup>, the following are key items concerning school district fund-raising activities:

- Student participation in fund-raising events **should be voluntary; it cannot be made mandatory or made a requirement** for students to participate in or contribute to a fund-raising event.
- Students **cannot be excluded** from an activity that has been funded by student body funds because they did not participate in the fund-raising activity.
- Any proceeds from fund-raising activities are to be spent for the benefit of the **entire student club or group**, and are not to be spent specifically on the students that raised the money.
- Any fund-raising activities should be considered supportive of, and an adjunct to, the student's education experience, and should not conflict with the governing board policies of the district.

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<sup>1</sup> Fiscal Crisis and Management Assistance Team, The Associated Student Body Accounting Manual & Desk Reference 76 (2009).

- Safety and health considerations of the students should also be considered when approving a fund-raising activity. Those activities that may pose a risk of harm to students, or those that pose a risk of liability on the school district, should not be approved. Examples of such activities could include: mechanical or animal rides; use of darts or arrows; objects thrown at people; use of water tanks where people are dunked; use of trampolines; and destruction of cars or similar objects with hammers.

Adherence to the above items should not only be reflected in the fund-raising activities themselves, but also in the wording of any fund-raising materials or publications. We also recommend that any materials or publications used for distribution for the purpose of fund-raising be reviewed by site or district administration for approval, with questions referred to legal counsel as necessary.

## **FOOD SALES**

Education Code section 48931 grants the governing board the authority to authorize food sales by student organizations on school premises. Food sales are a popular method of fund-raising, but are highly regulated, both to protect the integrity of the federal school meal programs, and to ensure students receive good nutrition. Food sales during the school day for fund-raising purposes are restricted on how frequent and when they can occur. Further, Education Code sections 49431, 49431.2 and 49431.5 stipulate that food and beverages sold during school day events must comply with nutritional guidelines. These guidelines also apply to any parent groups that are selling food to students as a fund-raising endeavor during the school day. However, food sales for fund-raising that occur at least one half hour before the start or after the end of the school day, or occur off-campus, are not required to comply with these restrictions.

Food sales from vending machines are also restricted by the Education Code, which includes a restriction on exclusive carbonated beverage vending contracts unless the district governing board has held a public hearing to adopt a policy that ensures that adequate controls are in place to oversee the funds raised and that the funds are used to benefit public education. The statutes and regulations that relate to food sales include Education Code sections 48931, 35182.5; 49431; California Code of Regulations, Title 5 sections 15500 and 15501; and United States Department of Agriculture APB: SP-01-04, Title 7, Code of Federal Regulation, Parts 210 and 215.

## **RAFFLES/GAMES OF CHANCE**

In general, raffles violate California law and are considered to be a form of gambling. However, under certain circumstances, parent-teacher organizations or other school booster clubs may be eligible to conduct a raffle. Revenue and Taxation Code 23701d stipulates that fund-raising raffles or games of chance can be conducted as long as an organization is a tax-exempt nonprofit organization with an approved tax identification number; must have been licensed to do business in California for at least one year; and must annually register and receive written confirmation with the Attorney General's Registry of Charitable Trusts prior to holding the raffle. (Penal Code § 320.5.) In addition, raffles must be conducted according to the following guidelines:

- 1) Each ticket must be sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub must be marked with a unique and matching identifier;
- 2) Prize winners must be determined by drawing from among the coupons or stubs described in paragraph 1 that have been detached from all tickets sold for entry in the raffle;

- 3) The draw must be conducted in California under the supervision of a person who is at least eighteen (18) years of age; and
- 4) At least ninety (90) percent of the gross receipts must be used by the eligible organization “to benefit or provide support for beneficial or charitable purposes.”

## **CHARGING STUDENT FEES**

In 1984, the California Supreme Court weighed in on the subject of charging student fees in the case of Hartzell vs. Connell (1984) 35 Cal.3d 899. The defendant school district adopted a plan requiring high school students to pay a fee of \$25 for each extracurricular activity in which they chose to participate. The fee program included athletic teams, dramatic productions, vocal or instrumental groups, and cheerleading. The Court held that the district’s policy violated the California constitution’s free school guarantee, and struck down the activities fees as unconstitutional.

The Hartzell decision was based on the Court’s finding that extracurricular activities formed a fundamental part of education provided by the district. However, not all school-related operations are fundamental educational activities. In Arcadia School District v. State Department of Education (1992) 2 Cal.4th 251, the California Supreme Court held that transportation services are not a necessary element of any school’s activity. As a result, the Court found that school districts may charge a fee for providing transportation services, because it is not within the constitution’s free school guarantee.

Additionally, Title 5, California Code of Regulations, section 350, specifically states: “A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.” Under its Management Advisory 97-02, the State Board of Education also made clear that no student fees are to be charged unless specifically authorized by law. The advisory indicated that the Attorney General, in many opinions, has stated that school districts cannot levy fines on students as a prerequisite for participating in any class, whether compulsory or elective. These prohibited fees include security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms or other equipment.

## **ADVERTISING AGREEMENTS**

Many school districts are being approached by private companies to enter into agreements which allow for the placement of advertisement in schools. Such agreements may allow advertisements to be placed on tables, wall panels, bleachers, murals and banners. Although such agreements have the potential of producing a steady revenue stream for a school district, it is still a contract that needs to be read carefully and understood before signing.

Moreover, school districts need to be aware of the fact that in accordance with Education Code section 17604, no contract is valid or enforceable against a school district unless the contract has been approved or ratified by the governing board of the district. For this reason, school districts should handle the negotiations of the agreement with the private company as opposed to individual schools doing it on their own. This will facilitate getting approval for the agreement(s) from the governing board and ensure the district’s interests are protected.

With regard to language within the agreement, school districts should try to: (i) make sure that the district has the exclusive right to approve any ad product before it is installed in any school and ensure the district has reasonable time to review and approve any proposed advertisements; (ii) coordinate the delivery and installation of any advertisements to take place before or after school hours; (iii) ensure that maintenance and operations staff receive proper training from the advertiser on how to maintain the advertisements;

and (iv) make sure proper protections are in place for the district and school where the advertisements are located, in the event of breach of the agreement by the private company, just to name a few things. By taking the time to understand and negotiate a clear agreement from the beginning, the district reduces risk of liability and litigation after the agreement is signed.

Any school district that is considering a fund-raiser or other revenue generating activity, should carefully review the details of the activity with its administration and other key personnel to ensure the activity complies with the district's policy as well as legal requirements. If the district is unsure of whether the activity is permissible, we strongly advise school districts to obtain a legal opinion prior to the activity taking place in order to reduce the district's exposure to liability.

If you have any questions regarding the information above relating to alternative sources of funding, please contact one of our five offices.

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