

BOOSTERS, PTAS, PTOS: THE GOOD, THE BAD AND THE DANGEROUS

Presented by:

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BOOSTERS IN THE NEWS

- <https://www.abcactionnews.com/former-largo-high-booster-club-president-arrested-for-stealing-thousands-of-dollars>
- <https://www.kare11.com/article/news/booster-club-says-it-was-swindled-out-of-20k/89-603111198>
- http://www.bcdemocrat.com/2018/12/26/sentence_handed_down_in_booster_club_theft_case/

OBJECTIVES

- Purpose & Role of Support Organizations
- Legal Distinctions between District and Support Organizations
- Gift of Public Funds
- Governance & Legal Duties of Support Organizations
- Formation of Support Organizations: Basic Requirements
- District Authority to Receive Donations
- Relationship between District and Support Organizations
- Prohibited Transactions and Financial Management
- Raffles
- Organizational Funds
- UIL Booster Guidelines

SCHOOL SUPPORT ORGANIZATIONS

- Booster Clubs
- Parent-Teacher organizations / associations
- District "Foundations"
- Other Fundraising Groups

PURPOSE & ROLE OF SUPPORT ORGANIZATIONS

- Support the students in your district.
- Fundraising.
- Organize activities for the school community.



DISTRICT & SUPPORT ORGANIZATIONS ARE SEPARATE LEGAL ENTITIES

- Oversight and Accountability
- Purchasing Issues
- Liability Issues
- “Gift of Public Funds”

GIFT OF PUBLIC FUNDS

- Article III of the Texas Constitution
- Support Organization vs. School District
- The Test

GIFT OF PUBLIC FUNDS – THE TEST

- To ensure a gift of public funds has not occurred, i.e. the Test:
 - Predominate purpose of expenditure is to accomplish a public purpose appropriate to the District;
 - The District maintains control over the funds to ensure public purpose is carried out and to protect the public's investment; and
 - The District receives a return benefit.

HYPO - GIFT OF PUBLIC FUNDS #1

- **Booster club asks school district to allow it to use gymnasium for activity at no cost. Can the district allow this?**
 - Yes.
 - GKD (Local) requires payment of a rental fee for non-school use of facilities and use of gymnasium only when primary participants are school-aged children.
 - However, GE (Local) states:
 - District-affiliated school-support or booster organizations may use District facilities with prior approval of the appropriate administrator; and
 - Other parent groups may use District facilities in accordance with policy GKD.

HYPO - GIFT OF PUBLIC FUNDS #2

- Can a school district ask its legal counsel to advise a booster club on whether to structure itself as a 501(c)(3) non-profit corporation?
 - No.
 - How do you make it legal?
 - You can't. Suggest to the booster club to seek its own legal counsel and/or tax professional.
 - FYI, legal counsel cannot provide legal advice to an entity that is not its client. It would create a attorney-client relationship with the support organization and a conflict of interest.

GOVERNANCE AND LEGAL DUTIES OF SUPPORT ORGANIZATIONS

- Governed by Articles of Incorporation, Constitution and/or By-laws.
- Affiliated with the District
- Must abide by statewide or nationwide regulations
- Non-profit status
- IRS



FORMATION OF SUPPORT ORGANIZATIONS: BASIC REQUIREMENTS

- Obtain approval from District
- File a Certificate of Formation with the Secretary of State
- Articles of Incorporation, Constitution and/or Bylaws
- 501(c)(3)?
- Sales and use tax permit
- Post office box/permanent mailing address
- Proof of liability insurance

SCHOOL DISTRICT AUTHORITY TO RECEIVE DONATIONS

- BAA (Legal)
- CDC (Legal)
- CDC (Local)

SCHOLARSHIPS

- A Booster Club may award scholarships consistent with the District's scholarship program/philosophy/objectives/Board Policies/and UIL rules.
- School booster clubs are allowed to give scholarships to students. If a booster organization is sponsoring a scholarship for students, it must have the school principal's approval (UIL requirement). Such scholarships may not be awarded until the student has exhausted all remaining UIL eligibility. Additionally, any monies should be given directly to the institution the student is to attend or to the student with proper proof of enrollment.

RELATIONSHIP BETWEEN DISTRICT AND SUPPORT ORGANIZATIONS

- Districts may accept or reject donations.
- District may assist the organization in limited ways.
 - Districts are often asked to assist by providing: Materials/ facilities/ equipment/ personnel/ use of revenue-producing assets.
 - If the District assists, it may be considered a “gift of public funds.” Apply the Test.
 - District and Support Organization may hold meetings to clarify roles and responsibilities.
- District is required to conduct criminal background check on all volunteers working with students.

PROHIBITED TRANSACTIONS

- Gifts of public money or donations by the school district of items of value are prohibited.
- Districts may not legally undertake any activity that promotes, endorses or prohibits the exercise of political or religious beliefs.
- Use of district vehicles for non-school functions is problematic. Could create exception to governmental immunity.
- Districts should refuse to provide financial or professional services for organizations.
- Districts are prohibited from conducting raffles.

EXAMPLE – TITLE IX

- A district has a boys' baseball and girls' softball team. The teams have an equal number of participants and equivalent operational needs. The district provides each team with a \$4000 budget.
 - The boys' baseball team has a corresponding booster club. The softball team does not.
 - The club raises an additional \$3000 for the boys' team and requests approval from the superintendent to use the funds to purchase new equipment and uniforms for the boys' baseball team. Although these funds are not spent by the district, the funds will be included in the funding analysis for Title IX purposes. The girls' team now faces a \$3000 funding disparity.
 - To avoid a Title IX violation, the district could:
 - spend more of the district's money on the girls' team;
 - deny the booster club's purchasing request; or
 - convince the club to divide the funds equally between the two teams.
 - Districts should note, however, that spending on extracurricular programs is only one aspect of compliance with Title IX. If a district is anticipating a particularly large donation from a booster club (such as a generous gift to the football program), the district should seek advice from an attorney before accepting the gift or agreeing to use it in a manner that would primarily benefit the resources available to one sex.

WHAT IS A RAFFLE?

- The Texas Charitable Raffle Enabling Act §2002.001(6) defines a raffle as the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize.
- Qualified organizations may hold two raffles per year.
- Prize may not be money. There is no value limit on prizes donated. However, if raffle organizers buy a prize, the value may not exceed \$50,000.
- Other rules apply, consult Attorney General website.

RAFFLES: KNOW THE LAW

- The Charitable Raffle Enabling Act authorizes “qualified nonprofit organizations” to hold raffles, and includes the following requirements:
 - Must be at least three years old;
 - Must elect its governing body;
 - Must have a 501(c) tax exemption;
 - Must have members;
 - Cannot distribute income to its members; and
 - Cannot participate in any political campaign.
- Keep in mind there are Tax/IRS implications as well.
- Policy CDC (Legal): a school district is not a “qualified nonprofit organization” for purposes of the Charitable Raffle Enabling Act.

ORGANIZATIONAL FUNDS

- Reduce overlap between District and Booster Club.
- Officers should be responsible for the flow of funds.
- By-laws may require appointment of an audit committee for periodic review of financial records.
- Use of an external, independent accountant or auditor may be advisable.
- Bank account statements provide an overview of the organization's financial status.
- Establish separate responsibilities for collection, bookkeeping, accounting and disbursement of funds.

HYPO – CONFLICT #1

- Should a District employee or official serve as president of the booster club?
 - No law specifically prohibits a board member from serving as a booster club officer, but this is not a recommended practice.
 - Similarly, an employee considering service as a booster club officer should be aware of the potential conflict of interest.
 - Policy DBD(LOCAL) requires an employee to notify his or her supervisor of any personal obligation or relationship that in any way creates a potential conflict of interest with the employee's job duties or the best interests of the district.

UNIVERSITY INTERSCHOLASTIC LEAGUE (UIL) BOOSTER CLUB GUIDELINES

- **General Guidelines:**
 - Role of the Superintendent
 - Role of the Booster Clubs
 - Written policies
- **Athletic Boosters**
- **Academic and Music Boosters**
- https://www.uiltexas.org/files/policy/booster_club_guidelines.pdf

OFFICIAL INTERPRETATION OF THE UIL ATHLETIC AMATEUR RULE, SECTION 441 OF THE UIL CONSTITUTION AND CONTEST RULES:

(a) VALUABLE CONSIDERATION SCHOOL TEAMS AND ATHLETES MAY ACCEPT:

1. Pre-Season. School athletic teams may be given pre-season meals, if approved by the school.
2. Post-Season. School athletic teams may be given post-season meals if approved by the school. Banquet favors or gifts are considered valuable consideration and are subject to the Awards and Amateur Rules if they are given to a student athlete at any time.
3. Other. If approved by the school, school athletic teams and athletes may be invited to and may attend functions where free admission is offered, or where refreshments and/or meals are served. Athletes or athletic teams may be recognized at these functions, but may not accept anything, other than food items, that is not given to all other students.

(b) ADDITIONAL VALUABLE CONSIDERATION THAT SCHOOL TEAMS AND ATHLETES MAY ACCEPT

Examples of additional items deemed allowable under this interpretation if approved by the school, include but are not limited to:

1. meals, snacks or snack foods during or after practices;
2. parties provided by parents or other students strictly for an athletic team



ADDITIONAL SOURCES OF INFORMATION

- Booster Clubs: www.boosterclubs.org
- Foundations: www.schoolfoundations.org
- Nonprofit Organizations:
 - Exempt Organizations in Texas-FAQ
<http://www.window.state.tx.us/taxinfo/exempt/exemptfaq.html>
 - Nonprofit Resource Center of Texas: www.nprc.org
 - Nonprofit FAQs-Secretary of State:
www.sos.state.tx.us/corp/nonprofitfaqs.shtml
 - Texas Association of Nonprofit Organizations: www.tano.org
 - Texas Nonprofits: www.txnp.org
 - Texas Nonprofit Management Network: www.texasnetwork.org
- PTA: www.pta.org
- School District Policies
- Attorneys/Accountants/Consultants for the support organization
- Staff members from the Internal Revenue Service (IRS)



RECOMMENDATIONS

- Fund raising activities should support the educational goals of the school or program and should not exploit students.
- The Booster Club must obtain district approval before engaging in fundraising projects, but the Booster Club retains control over the details of the project and the initiation of expenditures of funds.
- Fund raising should be primarily done by parents, with students having limited participation and solely as volunteers (never require students to participate nor establish separate accounts for individual students).
- For UIL Booster Clubs, they may donate funds to a school or to the school district and may make suggestions or recommendations, however, when these funds are deposited in a school or school district account, the Booster Club relinquishes all control over these funds. Money donated to a school from a UIL Booster Club may not be earmarked for a particular expense.
- Booster Club funds should not be used to support individual students or to support athletic camps, clinics, private instruction or any activity outside of the school (only applies to athletics and not academics/fine arts).
- Booster Clubs must benefit the group as a whole, not its individual members, and the use of individual accounts is prohibited.
- Contributions should be made directly to the District or outside entity and not directly to any particular student (exception: Scholarships).



CHECKLISTS ARE GOOD!

- Create a form to be signed by the Booster Club President each year.
- Provide Annually:
 - Current Officers
 - Copy of company docs (COF, Bylaws)
 - Annual Budget / Planned fundraising
- Provide frequently:
 - Quarterly financial statements, itemizing receipts and expenditures
 - Minutes of each meeting
 - Detailed annual audit



REGISTRATION/REPORT FORMS ARE GOOD!

- Require each Booster Club to complete a Registration and Approval Form that includes name/contact info/address/student group and statement verifying understanding of the District's regulations, philosophy, Board policy, etc. and that noncompliance may result in disbanding of the Booster Club.
- Require annual reporting forms that note submission of all required information:
 - Names and contact information;
 - Annual budget;
 - Audit/financial report;
 - Approved minutes;
 - Changes to the organization's Bylaws; and
 - Agreement and consent to provide criminal background checks for all officers and volunteers who expect to have contact with students or be on school property.



DO YOU HAVE ADMINISTRATIVE REGULATIONS?

- You should!
- Basically sets forth these rules in a document that can easily be distributed and signed by Booster Club folks to be clear of the District's administrative regulations and procedures with which all Booster Clubs must comply.

HYPO – EMPLOYEES COLLECTING FUNDS

- A group of teachers have been collecting funds for their school district. While their organization has a name, they are not associated with any support organization (i.e. booster club, PTA, education foundation, etc.) and have not submitted documentation with the Secretary of State or IRS for legal status as a 501(c)(3) non-profit corporation.
- Good idea?
 - No. Why?
 - Accountability.
 - Essentially, you have school employees using their positions to leverage donations on behalf of their employer.
 - Risk: commingling of funds, absconding with the funds, etc.
- When a person/group is collecting funds “on behalf of” a school district, the person/group needs to have some level of formal structure to officially associate itself with the district, and to give clear separation between itself and the district.
- District employees should not handle money, nor should they be officers or Board members.

HYPO – COMMUNITY MEMBER(S) COLLECTING FUNDS

- A group of community members have been collecting funds for their school district. They are not associated with any support organization (i.e. booster club, PTA, education foundation, etc.) and have not submitted documentation with the Secretary of State or IRS for legal status as a 501(c)(3) non-profit corporation. Good idea?
- No. Why?
 - Accountability.
 - Essentially, one or more folks walking around a neighborhood asking for money.
 - When a person/group is collecting funds “on behalf of” a school district, the person/group needs to have some level of formal structure to officially associate itself with the district, and to give clear separation between itself and the district.

HYPO – EARMARKED DONATIONS

- Can a school-support organization (supporting a non-UIL Group) raise and donate funds to the District for use on a specific project or for a specific purpose?
 - Yes; however, the District has the ultimate obligation and authority to determine whether to accept a donation that the donor has marked for a specific use.
 - Many considerations: including specific program needs and equitable funding of programs.
 - For example, Title IX of the Education Amendments Act of 1972 requires equitable funding between girls and boys programs, including athletic programs and facilities. School-support organizations should be communicating with District officials in order to ensure full understanding of the District's needs and limitations.

HYPO – VENDOR SELECTION

- If a school-support organization is raising funds to be donated for District building projects, can the donor organization require that specific vendors or contractors be utilized for the project?
 - No. State law requires that school districts and other governmental entities follow very strict procedures for the procurement of goods and services, in order to secure the best quality and value is obtained, including construction services.
 - This typically requires a formal procurement process in which the Board considers the proposals of several vendors or contractors.
 - Any offered donation which contains a requirement that specific vendors be utilized on the project at issue should be rejected.

HYPO – VENDOR SERVICES

- If a vendor or contractor offers to donate services to a District building project, will the District accept that donation?
 - No.
 - State law requires that school districts follow strict procedures for the procurement of goods and services.
 - If a vendor or contractor chooses to submit a proposal for a District building project in response to the District's formal procurement procedures, the District will take into consideration any amount of donated services offered in the submitted proposal; however, the District cannot avoid the required procurement process regardless of donations offered.

HYP0 – PROMISES

- Can a school-support organization fundraising money for the benefit of the District make promises to potential donors about the use of the donation?
 - Depends.
 - Without explicit written authorization from the District, school-support organizations are not authorized to speak on behalf of the District or make promises of District action.
 - The District may authorize school-support organizations to seek donations for specific purposes, programs or projects, however, and in that case the organization would be permitted to communicate that information to potential donors.

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