



## **Donations To and From Public Schools: Legal Questions and Considerations**

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In the wake of natural disasters that impacted school districts across the state, Texas school officials have many questions about donations of funds, facilities, and other resources. When is it permissible for a school district to donate to another school district? What legal and practical issues do districts receiving donations need to consider? This article provides answers to commonly asked questions on both sides of the donation relationship.

### ***Q. Can we donate money or property to another school district in need?***

- A. It's complicated. Donations of school district resources are restricted by the Texas Constitution's prohibition on gifts of public funds.<sup>1</sup> In addition, the Texas Education Code limits the use of school district funds to purposes necessary in the conduct of the public school as determined by the board of trustees.<sup>2</sup> Further, a district may not spend its funds in any manner other than as specified in the budget adopted by the board, although the board may amend the budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses.<sup>3</sup>

The Texas attorney general has established a three-part test to determine when a public entity may constitutionally make a donation. In order to satisfy the test, the board of trustees of a school district making a donation must determine that (1) the donation primarily accomplishes a public purpose, rather than a benefit to private parties; (2) the donating school district retains sufficient control over the donation to ensure that the public purpose is accomplished; and (3) the donating school district will receive a return benefit.<sup>4</sup> Note that the burden is on the donor school district to ensure that the constitutional test is satisfied. Even when the donation will benefit another public school district, the district making the donation must ensure that its own community receives a return benefit.

School boards sometimes adopt resolutions as a method of documenting the public purpose of an expenditure. The resolution should be adopted prior to the expenditure, not after the fact.<sup>5</sup>

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<sup>1</sup> Tex. Const. art. III, § 51.

<sup>2</sup> Tex. Educ. Code § 45.105(c).

<sup>3</sup> Tex. Educ. Code § 44.006(a).

<sup>4</sup> *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377 (Tex. 2002); Tex. Att'y Gen. Op. No. GA-76 (2003).

<sup>5</sup> Tex. Att'y Gen. Op. No. JC-432 (2001).

For a more complete discussion of constitutional and statutory restrictions on school district funds, including a chart of allowable expenditures, see TASB Legal Services' outline [Use of Public Funds](#).

**Q. *Can we donate gate receipts from a football game to victims of a natural disaster?***

- A. State law requires a school district to adopt a policy governing the expenditure of proceeds from gate receipts, rentals, vending machines, and other local sources of revenue over which the district has control.<sup>6</sup> The required policy, which can be found within TASB's Model Policy CFD(LOCAL), must require discretionary expenditures of these funds to be related to the district's educational purpose, provide a commensurate benefit to the district or its students, and not be an unconstitutional gift of public funds. Because of this restriction, some districts have found other ways to assist victims of a natural disaster. One option would be to have a local education foundation, booster club, or parent-teacher organization host an event (like a scrimmage or a pep rally) with the intention of donating the funds in a manner consistent with the charitable goals of the organization.

**Q. *May a school district donate surplus property to another school district?***

- A. Yes, in accordance with district policy. A school board may dispose of property that is no longer necessary for district operations in an appropriate manner.<sup>7</sup> Most school boards have delegated to the superintendent the authority to declare property surplus and determine whether the property has a market value. If property does not have a resale value, or if the cost of resale would exceed the value of the property, the property may be donated to another entity, including another school district.

**Q. *What is the procedure for loaning facilities or property to another school district?***

- A. After a disaster, school districts frequently look to their neighbors. A school district less impacted by a calamity may consider loaning its buses, portables, and even buildings to help another district get back to the business of educating students as soon as possible. Temporary leases are not subject to the notice-and-bidding rules that normally apply to sales of district real estate.<sup>8</sup> Therefore, a district should be able to provide property, even real property, to another district in need in a relatively efficient manner. However, some legal formalities will protect both districts in this situation.

If the loan is for no consideration, the constitutional limitation on gifts of public funds discussed above may apply; consequently, the donor district may need to adopt a resolution setting out the public purpose of the loan. In addition, districts borrowing or lending property

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<sup>6</sup> Tex. Educ. Code § 44.908.

<sup>7</sup> Tex. Educ. Code § 11.151(c). See TASB Policy CI(LEGAL).

<sup>8</sup> See *Walker v. City of Georgetown*, 86 S.W.3d 249 (Tex. App.—Austin 2002, pet. denied) (holding that 10-year lease with renewal option did not require bidding under Local Government Code chapter 272).

should consider entering into a simple interlocal agreement or memorandum of understanding (MOU). An MOU can serve as an effective method of documenting the sufficient controls in place to ensure that the loaning district receives a return benefit. For example, the receiving district could agree to waive any potential claim against the loaning district, return the property in the same condition, and maintain its own insurance. In addition, if a school district loans a facility to be used as a shelter, documentation of an agreement stating that the facility was used as housing for disaster victims may be required in order to obtain reimbursement from FEMA.<sup>9</sup> A written agreement can also spell out practical matters, such as the timeframe of the loan and which district is responsible for picking up or delivering borrowed property. A district's school attorney can help administrators approach these issues with foresight, to ensure that neighboring districts preserve their good relationships even after the urgency of a natural disaster has passed.

***Q. Can our students donate activity funds or hold a fundraiser to benefit another community that was impacted by a hurricane?***

- A. The answer depends on your local policy. Unlike funds that are directly controlled by the district, student activity funds fall into a category of funds for which the district has fiduciary responsibility. In other words, the district holds student activity funds as an agent of the student groups, but the student groups decide how to use the funds. (For a more detailed discussion, see TASB Legal Services' article, [Activity Funds](#).)

To facilitate the district's fiduciary role, TASB Model Policy CFD(LOCAL) typically requires the principal or student group sponsor to ensure that expenditures benefit the district's students.

Another district policy, TASB Model Policy FJ(LOCAL), addresses procedures for student fundraisers. If this local policy permits student groups to raise money for an outside organization, students can contribute towards organizations providing relief to hurricane victims.

***Q. What are considerations for districts that are receiving donations from private or public sources?***

- A. First, check your local policy. TASB Model Policy CDC(LOCAL) sets out certain criteria that apply to donations to the school district. Most districts have opted to authorize the superintendent to accept *unsolicited* gifts, meaning donations that the district has not requested. Before the superintendent accepts a gift, he or she must consider certain factors, such as whether a donation is consistent with the district's educational mission, would result in ongoing or related costs, or would result in inequitable funding among district programs. If a gift is solicited by the district or in the name of the district, the gift becomes the sole property of the district.

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<sup>9</sup> Tex. Educ. Agency, [To the Administrator Addressed Letter Re: Procurement Guidance for Schools Affected by Hurricane Harvey](#) (Sept. 21, 2017).

Districts that intend to seek FEMA reimbursement after a disaster should take note: FEMA frequently requires a local district to cover a percentage of the net cost of recovery. Donations to the district may count toward the district's local contribution. Donations must be carefully documented, however. Districts with previous experience seeking FEMA reimbursement recommend keeping a log of donations and volunteer time, including placing a dollar value on both financial and in-kind donations. The log may also include loaned equipment or property.

***Q. Are there any concerns that we should share with private donors?***

- A. The law does not require a district to notify potential donors of any specific concerns, but districts receiving donations may find it useful to explain that school districts do not qualify as charitable organizations under Internal Revenue Code section 501(c)(3). Donations to governmental entities are tax exempt, but a donor who is concerned about the tax implications of a gift should consult his or her own tax professional. School support groups, like local education foundations and parent-teacher organizations, are able to receive tax exempt donations as charitable organizations if they are duly organized.

***Q. Can we distribute monetary donations or gift cards from outside sources directly to our employees?***

- A. Districts may be approached by outside donors seeking to provide money or cash equivalents, like gift cards, to district employees who were impacted by a disaster. While well-intentioned, a district that agrees to facilitate donations to employees may create unnecessary complication if it serves as the middle man in the transaction. Funds received then distributed by the school district typically become public funds, subject to the restrictions described above.. Moreover, funds distributed to an employee from his or her employer are likely to be considered reportable income to the employee. As an alternative, donations may be directed to a separate activity fund, described above. Donations from a local educational foundation or parent-teacher organization to district employees would not be subject to the restrictions on public funds. For other issues regarding payments to district employees, see TASB Legal Services' article [Personnel Issues During School Closings](#).

***Q. May school districts or other donors donate new or used textbooks to replace damaged instructional materials?***

- A. School districts may donate to each other in accordance with law and policy. TEA has published a helpful [To the Administrator Addressed Letter about a "needs list" shared in EMAT, TEA's online instructional material ordering system](#). See Tex. Educ. Agency, [To the Administrator Addressed Letter Re: Instructional Materials Concerns Related to Hurricane Harvey](#) (Sept. 20, 2107). School districts that wish to donate materials to districts in need should consult the needs list to identify a potential recipient.

Donations should be considered only for materials no longer in use by the donor district. School districts own the instructional materials they have purchased with state or local funds. Tex. Educ. Code § 31.102. A school board is permitted to sell materials and equipment procured with local funds. Tex. Educ. Code § 31.106. Materials and equipment procured with state instructional materials funds may also be sold, with certain limitations. Tex. Educ. Code § 31.105(a). In light of the constitutional restriction on the gift of public funds, as well as these statutory provisions, instructional materials that are or reasonably may be of use to the donor district may be loaned, but not donated.

Once materials are surplus, however, a school board is authorized to determine how the district will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment. Tex. Educ. Code § 31.105(b). A board may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the State Board of Education (SBOE) if the board determines that the instructional material is not needed and the board does not reasonably expect that the instructional material will be needed by the district. A district that disposes of printed materials before the SBOE discontinues use of the materials must report the decision to the commissioner. Tex. Educ. Code § 31.105(c).

Private donors may provide funds or materials and equipment directly to school districts to replace damaged instructional resources. Unfortunately, however, state law limits the opportunity of a publisher or manufacturer of instructional materials to donate free instructional materials to school districts. The restriction is based on a state law designed to prevent unfair pricing practices in the sale of textbooks and other instructional materials. The law says that a publisher has to offer every district the lowest price it offers any district, and if the publisher gives free materials to one district, it must give the materials free to all. Tex. Educ. Code § 31.151(a). Violation of this law is a Class C misdemeanor. Tex. Educ. Code § 31.153. Consequently, publishers will be able to donate surplus or discontinued items that they no longer offer for sale, but they may not freely donate current publications.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/donations\\_public\\_schs.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/donations_public_schs.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

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