Donations To and From Public Schools

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What legal and practical issues do school districts receiving donations need to consider? When is it permissible for one district to donate to another district? This article provides answers to commonly asked questions on both sides of the donation relationship.

1. **What laws and policies apply when a district receives a donation?**

   Texas Education Code section 11.156 provides that a donation of property for the benefit of the public schools made by anyone, if not otherwise directed by the donor, vests the property in the district board of trustees and may be used “for any purpose designated by the donor that is in keeping with the lawful purposes of the schools” or “for any legal purpose” if no purpose is specified by the donor.¹

   Effective on September 1, 2021, a newly added provision in Section 11.156 requires districts to accept and spend donations from recognized parent-teacher organizations or associations (referred to here as PTOs) that are designated to fund supplemental educational staff positions at a campus at the direction of, and within the time period specified by, the designated campus.² According to the Texas attorney general, districts must accept and spend PTO funds designated for the 2021-22 school year, assuming the donation meets all the statutory requirements.³

   TASB Model Policy CDC(LOCAL) sets out criteria for donations to the school district. Most district policies authorize the superintendent to accept unsolicited gifts, meaning donations that the district has not requested. Before the superintendent accepts a gift, the policy requires considering certain factors, such as whether a donation would result in ongoing costs or inequitable funding among programs.

   While not required by law, districts receiving donations may find it useful to explain to potential donors that school districts do not qualify as charitable organizations under Internal Revenue Code section 501(c)(3). School support groups, like local education foundations and PTOs, are able to receive tax exempt donations as charitable organizations if they are duly organized.

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2. **Can a district distribute monetary donations or gift cards from outside sources directly to employees?**

While well-intentioned, a district that agrees to facilitate donations to employees may create unnecessary complication. Funds received by a district typically become subject to the restrictions in the Texas Constitution on gifts of public funds. Moreover, funds distributed to an employee are likely to be considered reportable income. As an alternative, donations may be directed to a separate activity fund. Donations from a local educational foundation or PTO to district employees would not be subject to the restrictions on public funds.

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

It depends. Donations of school district resources are restricted by the Texas Constitution’s prohibition on gifts of public funds. 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. 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.

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

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. The required policy, at CFD(LOCAL), requires 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. However, an education foundation, booster club, or PTO may host an event to raise funds in a manner consistent with the organization’s charitable goals.

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4 Tex. Const. art. III, § 51.  
5. **May a school district donate surplus property to another school district?**

A school board may dispose of property that is no longer necessary for district operations in an appropriate manner. 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.

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

After a disaster, school districts frequently look to their neighbors. Temporary leases are not subject to the notice-and-bidding rules that normally apply to sales of district real estate. 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 donor district may need to adopt a resolution setting out the public purpose of the loan in order to satisfy the test for gifts of public funds. Districts should also consider entering into a simple written agreement. 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. A written agreement can also spell out 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.

7. **May school districts donate new or used textbooks to replace another district’s damaged instructional materials?**

As discussed above, school districts may donate to each other in accordance with law and policy. After Hurricane Harvey in 2017, TEA created a process for districts to share a “needs list” through EMAT, TEA’s online instructional material ordering system. School districts that wish to donate materials to districts in need should consult the needs list on TEA’s Instructional Materials Emergency Website 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. A school board is permitted to sell materials and equipment procured with local funds. Materials and equipment procured with state instructional materials funds may

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also be sold, with certain limitations. 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. 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.

8. **May other donors donate new or used textbooks to replace a district’s damaged instructional materials?**

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. Violation of this law is a Class C misdemeanor. 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.

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