

Use of Public Funds

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Legal Services

Use of Public Funds TASB Legal Services

Public entities, including school districts, exist to carry out specific tasks. These tasks often require the collection and expenditure of public funds. To ensure the appropriate use of those funds, various laws provide direction for officials who must make spending decisions. The courts and the attorney general have reviewed and interpreted these provisions on many occasions, and those decisions provide additional guidance. This paper outlines the definition of public funds and the statutory and constitutional restrictions on their use. It also provides examples of expenditures that have received review by courts or the attorney general.

I. Public Funds Defined

Public funds are “[m]oneys belonging to [the] government, or any department of it, in [the] hands of [a] public official.” *Black’s Law Dictionary* 856 (6th ed. 1991).

The attorney general has opined that “[f]unds collected by a public agency and used for public purposes are clearly public funds.” Tex. Att’y Gen. Op. No. MW-0584 (1982).

In a case involving the Cameron County tax collector, the Texas Court of Appeals stated, “[p]ublic funds are those belonging to the state or to any county or political subdivision of the state. . . .” *Austin v. Fox*, 297 S.W. 341, 343 (Tex. Civ. App.—San Antonio 1927), *aff’d*, 1 S.W.2d 601 (Tex. Comm’n App. 1928).

The Texas Public Information Act (PIA) defines public funds as funds of the state or of a governmental subdivision of the state. Tex. Gov’t Code § 552.003(5). While this definition applies only within the PIA, the breadth of this definition conveys the meaning of public funds found throughout Texas statutory and case law.

In summary, **public funds are any funds from taxes or fees imposed by a governmental entity to raise revenues and any funds under the control of a governmental entity.**

This is a broad definition that may be interpreted to include not only local tax revenue and fees, as well as state and federal funds, but also cash and other assets obtained through gifts and fundraising. For more information, on student and employee activity funds, see TASB Legal Services’ memo [Activity Funds](#).

II. Restrictions on the Use of Public Funds

Texas Education Code—Expenditures Must Be “Necessary”

The Texas Education Code limits the use of school district local funds to purposes necessary in the conduct of the public schools determined by the board of trustees. Tex. Educ. Code § 45.105(c).

The term *necessary* should be read broadly to include purposes “appropriate or conducive to the conduct of a public school rather than indispensable thereto.” Tex. Att’y Gen. Op. No. JM-1265 (1990). No clear test or definition of *necessary* has been established. To be necessary, the expenditure must serve a legitimate public purpose and not merely private ends. The school board itself has the initial discretion to determine whether an expenditure is necessary, but the question whether a true public purpose has been served is ultimately up to the state courts. See *Davis v. City of Lubbock*, 326 S.W.2d 699 (Tex. 1959) (holding that whether a taking of property is for public use is a judicial question).

Texas Education Code – Expenditures Must Be Budgeted

Further, the district may not spend public funds in any manner other than as specified in the budget adopted by the board, but the board may amend the budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses. Tex. Educ. Code § 44.006(a).

Texas Constitution—Expenditures Must Have a Public Purpose

The Texas Constitution contains several restrictions on the use of public funds:

- **Tex. Const. art. III, § 44:** “The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law.”
- **Tex. Const. art. III, § 50:** “The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.”
- **Tex. Const. art. III, § 51:** “The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity.”

- **Tex. Const. art. III, § 52(a):** “Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.”
- **Tex. Const. art. III, § 53:** “The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.”
- **Tex. Const. art. XI, § 3:** “No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law or to prevent a county, city, or other municipal corporation from investing its funds as authorized by law.”

III. Compensation Increases

Article III, section 53, of the Texas Constitution prohibits the grant of extra compensation to a public employee or contractor after service has been rendered or performance has begun on a contract. While the language of Section 53 applies to “municipalities” and “counties,” the Texas Commission on Appeals concluded that these terms include public school districts. *Harlingen Indep. Sch. Dist. v. C.H. Page & Bro.*, 48 S.W.2d 983 (Tex. Comm’n App. 1932). In addition, Article III, section 44 of the Texas Constitution prohibits the legislature from granting extra compensation to a public employee after a contract has been entered into under pre-existing law.

The purpose of these constitutional restrictions is to prevent political subdivisions from giving away public money for services previously rendered, for which no valid legal authorization exists or for which the public would receive no return. Tex. Att’y Gen. Op. Nos. GA-0368 (2005), GA-0204 (2004). In other words, once a person has agreed to provide services to a district at a certain price, the district must have a legal reason for paying more than the person bargained for. For more information about the use of public funds for pay increases, see TASB Legal Services’ memo [Mid-Year Pay Increases of School District Employees](#).

IV. The Three-Part Test

The Texas attorney general has long held that Article III, Sections 51 and 52 of the Texas Constitution do not preclude the state or a political subdivision of the state from making an expenditure of public money that benefits a private person or entity if the appropriate

governing body follows a two-part test by (1) determining in good faith that the expenditure serves a public purpose and (2) placing sufficient controls on the transaction to ensure that the public purpose is carried out. Tex. Att’y Gen. Op. No. JC-0113 (1999).

In 2003, the attorney general adopted a three-part test established by the Texas Supreme Court to determine constitutional use of public funds. The Texas Supreme Court was specifically applying the test to determine if a statute accomplished a public purpose. The attorney general concluded that the three-part test also applied to political subdivisions exercising delegated legislative powers. The three-part test requires governmental bodies to: (1) ensure that the predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure that the political subdivision receives a return benefit. *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 384 (Tex. 2002)); Tex. Att’y Gen. Op. No. GA-0076 (2003).

As the governing body of a school district, the school board is empowered to make an initial determination of whether a proposed expenditure meets the three-part test. Generally the analysis is thought to be embedded in the board’s financial decision-making, such as adoption of the school district’s budget, setting the compensation plan, and entering contracts for goods and services. Occasionally, however, a school district will face a determination about an expenditure that either was not anticipated in the adoption of the budget or otherwise presents a question about the public (rather than private) purpose of the use of funds. In these instances, the best practice is to: (1) place the proposed expenditure on a school board agenda for board approval after consideration of the three-part test; and (2) amend the budget as necessary.

1. Public Purpose

The constitution does not bar a governmental expenditure that “benefits a private interest if it is made for the direct accomplishment of a legitimate public purpose.” *Brazoria County v. Perry*, 537 S.W.2d 89, 91 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ). See also *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995) (“A transfer of funds for a public purpose, with a clear public benefit received in return, does not amount to a lending of credit or grant of public funds in violation of Article III, Sections 51 and 52.”); Tex. Att’y Gen. Op. No. KP-0099 (2015) (holding that the hiring of a law firm by trustees to dispute their replacement by a board of managers could serve a public benefit with incidental benefits to the individual trustees.)

2. Sufficient Controls

For school districts in particular, the board of trustees must determine that an expenditure serves a valid school district purpose, and must impose sufficient controls, subject to judicial review. Tex. Att’y Gen. Op. No. JC-0113 (1999). Whether sufficient control measures are in place for an expenditure is not determined by who implements the control measures but rather by whether such controls were put into place at the time the expenditure was made. Tex. Att’y Gen. Op. No. KP-0099 (2015) (the fact that the trustees had been replaced by a board of managers did not affect whether control measures were put into place when the expenditure was made).

3. Return Benefit

A school board’s evaluation of an expenditure of public funds to benefit a private person or entity requires a determination that the contemplated expenditure furthers a public purpose; that the board retains sufficient control over the funds to ensure the public purpose is accomplished; and through this control, the district receives a benefit. It is important to note that the board’s determination that the expenditure would serve a public purpose must be made prior to the expenditure. A public entity should not reimburse expenses requested after the fact. Tex. Att’y Gen. Op. No. JC-0432 (2001).

V. Misuse of Public Funds

A public official who misuses public funds could be subject to civil and criminal liability.

Civil Liability

The attorney general discussed the potential liability of a school board trustee to a school district for wrongful payment of public funds in a case involving payment of an employee’s legal fees. The attorney general determined that official immunity must be decided on a case-by-case basis. Tex. Att’y Op. No. GA-115 (2003).

Generally, school officers and employees are immune from civil liability. This official immunity protects governmental employees who perform discretionary functions in good faith and within their authority. *City of Lancaster v. Chambers*, 883 S.W.2d 650 (Tex. 1994). In addition, statutory immunity provides that professional employees of a school district, including board members, are not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion on the part of the employee. Tex. Educ. Code § 22.0511(a). Without this protection, officers or employees could be liable for their actions in civil court.

Criminal Liability

Texas Penal Code section 39.02 defines the offense of Abuse of Official Capacity: A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly violates a law relating to the public servant's office or employment; or misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

The penalties for abuse of official capacity range from a Class A misdemeanor to a first degree felony depending on the seriousness of the offense and the value of the misuse. The district or county attorney with jurisdiction will decide whether and what charges should be filed. A governmental officer or employee who misuses public funds could be prosecuted under this law.

To help interpret and clarify this law, the Texas Ethics Commission has stated the following: "This criminal statute does not reach every instance in which state resources are used for personal purposes. Rather, a violation occurs if a public servant 'misuses' something of value belonging to the state and does so 'with intent to obtain a benefit or with intent to harm or defraud another.'" The opinion further states: "There are circumstances in which incidental use of state property for personal purposes is not a 'misuse' for purposes of Penal Code section 39.02." Examples of incidental use include making personal phone calls on state telephones, using state cell phones or computers for personal use, and attending to personal matters on state time for short time periods. Op. Tex. Ethics Comm'n No. 372 (1997). These types of common, incidental uses likely will not be considered criminal violations; however, the value of any equipment use or activity that incurs a direct cost or impedes agency functions should be reimbursed to the governmental entity.

VI. Allowable Public Funds Expenditures

Gifts and Compensation	Allowable expense of public funds?
Teacherages (living quarters for teachers)	Yes. ¹
Corrections for Mistakes in Payment	Yes. ²
Early Exit	Yes, if the district received consideration. ³
Salary Advances	No. ⁴
Extra Compensation (such as raises and bonuses)	Probably not. Extra compensation is prohibited after performance of the contract has begun. For contract employees, authorization for the additional payment may be included in the contract or in a board-adopted policy or compensation plan before the employee begins performance under the contract. The district may raise non-contract employee's future rate of pay between pay periods. ⁵
Reimbursement at Retirement	Only for leave days accrued after adoption of the reimbursement policy. ⁶

¹ The school district lawfully may provide living quarters for teachers. *Adams v. Miles*, 300 S.W. 211 (Tex. Civ. App.—San Antonio 1927), *aff'd*, 41 S.W.2d 21 (Tex. Comm'n App. 1931).

² If mistake or error causes an employee to be underpaid, the employee may be fully compensated for pay to which the employee is entitled. *Douthit v. Ector County*, 740 S.W.2d 16 (Tex. App.—El Paso 1987, writ denied).

³ Payments under an "early exit" plan for school district employees would not be unconstitutional if the district received consideration from participating employees in return for the payments. Consideration for a valid agreement is defined as either a benefit to the promisor or a loss or detriment to the promisee. *N. Natural Gas Co. v. Conoco, Inc.*, 986 S.W.2d 603, 607 (Tex. 1998); Tex. Att'y Gen. Op. No. JC-0165 (2000).

⁴ Salary advances to employees could constitute lending the school district's credit in violation of Article III, Section 52 of the Texas Constitution. In Texas Attorney General Opinion JM-1194 (1990), the attorney general opined that a municipality's decision to advance salaries to employees to be fully earned within one year would not be approved by courts, as there is no implicit public purpose in advancing salary to employees.

⁵ In the absence of additional consideration, a school district may not increase a teacher's annual compensation under the contract once part performance has been rendered. Tex. Att'y Gen. Op. No. MW-0068 (1979). Also, retroactive salary increases are prohibited. Tex. Att'y Gen. Op. No. JM-1113 (1989). Although gratuitous mid-contract pay raises are prohibited, the same effect may be achieved lawfully through the requirement of additional duties and consideration or by having contracted in advance for the raise. Tex. Const. art. III, § 53; Tex. Att'y Gen. LO-94-067 (1994); *Fausett v. King*, 470 S.W.2d 770 (Tex. Civ. App.—El Paso 1971, no writ) (concluding that a constitutional violation would take place if salaries are retroactively increased). *See also Hardison v. Beard*, 430 S.W.2d 53 (Tex. Civ. App.—Dallas 1968, writ ref'd n.r.e.) (permitting school districts to increase salary of an employee by executing new contract before old contract expires).

⁶ Reimbursement for unused state or local leave is constitutional only if the benefit applies to days of leave accrued after adoption of the reimbursement policy. *Lee v. El Paso County*, 965 S.W.2d 668 (Tex. App.—El Paso 1998, pet. denied); Tex. Att'y Gen. LO-98-099 (1998).

Paid Leave	Yes. ⁷
Gifts	Maybe. Small gifts might be allowable if the school board determines they serve a legitimate educational purposes. ⁸
Release Time for Professional Organizations	Probably not. ⁹

Board Member Expenses	Allowable expense of public funds?
Conference Registration Fees	Yes, if the school board makes certain determinations. ¹⁰
Travel Expenses	Yes, if determined to be necessary in the conduct of public schools and to serve a public purpose. ¹¹
Spouse Travel Expenses	No. ¹²

Student Expenses	Allowable expense of public funds?
Student Medical Expenses	Maybe. The school board must first determine the medical costs and associated travel costs for a student injured at school or during a school-related activity are necessary in the conduct of the school. ¹³

⁷ School districts have the authority to adopt policies to pay their employees for accrued sick leave, despite the repeal of former Texas Education Code section 21.919. Tex. Att’y Gen. Op. No. DM-0048 (1991). A school district may also adopt a policy of providing paid leave during active military service as part of consideration of employment. This policy should be implemented prospectively. Tex. Educ. Code § 22.003(d).

⁸ Plaques, flowers, frozen turkeys, and other small gifts are allowable expenditures as long as the school board determines that these items serve a legitimate educational purpose, such as increasing employee morale or productivity. Tex. Att’y Gen. LO-96-136 (1996).

⁹ Providing “release time” for the benefit of professional organizations is a gift of public funds where the district failed to articulate a public purpose or place adequate controls on that time to ensure that a public purpose was being served. Tex. Att’y Gen. Op. No. MW-0089 (1979). In that decision, the district’s policy permitted teachers to pursue the business of a professional organization during school hours while being paid by the school district. The district had paid almost \$23,000 in teacher salaries during “release time,” while at the same time paying for substitute teachers.

¹⁰ Such fees may be paid for school board members and employees so long as the school board (1) determines that the expenditures will serve a public purpose, and (2) attaches conditions to the expenditure to ensure accomplishment of that purpose. Tex. Att’y Gen. Op. No. JC-0080 (1999).

¹¹ Reimbursement of travel expenses of school board members is not illegal if the payment is determined to be necessary in the conduct of the public schools and to serve a proper public purpose. Tex. Att’y Gen. Op. No. H-0133 (1973).

¹² Reimbursement of travel expenses for a board member’s spouse constitutes a prohibited gift of public funds. Tex. Att’y Gen. Op. No. MW-0093 (1979).

¹³ The attorney general has determined that public expenditures cannot lawfully benefit private individuals in ways that are out of proportion to the overall public benefit. Tex. Att’y Gen. Op. Nos. JM-0220 (1984), JM-0065 (1983).

Student Scholarships	Yes, if the school board makes a determination that it serves an educational purpose. ¹⁴
Student Lunches	Yes. ¹⁵

Insurance, Legal Defense Costs, and Civil Fines	Allowable expense of public funds?
Student Insurance	Yes. ¹⁶
Trustee Insurance	Yes. ¹⁷
Civil Suit Defense Costs	Maybe. ¹⁸
Criminal Defense Expenses	No, not until the outcome of the prosecution is known and the board has made specific determinations. ¹⁹

However, a school board may pay medical costs and associated travel costs for a student injured at school or during a school-related activity if the expenditures are necessary in the conduct of the school. The legislature and the courts have recognized a school district's interest in protecting and providing for the health and safety of students. The voluntary provision of travel costs does not constitute a "gift" of public funds as long as the expenditure's predominant purpose is to accomplish a public purpose, not to benefit private parties. The school board must ensure that the school district receives a return benefit and must retain sufficient control over the funds/expenditure to ensure that the public purpose is met. Tex. Att'y Gen. Op. No. GA-0076 (2003).

¹⁴ Scholarship awards are allowed under Texas Education Code section 45.105(c) if the school board determines that the awards advance an educational purpose, such as encouraging academic achievement. Tex. Att'y Gen. Op. No. JM-1265 (1990); Tex. Att'y Gen. LO-93-093 (1993). (Note: Texas Attorney General LO-97-024 (1997) concluded that a district was not allowed to spend public funds on student scholarships pursuant to specific statutory language in effect at that time; however, the legislature later amended this language and the change again authorized such expenditures.)

¹⁵ Furnishing lunches for needy students is a proper use of funds. Tex. Att'y Gen. Op. No. C-0601 (1966).

¹⁶ School districts may obtain insurance against bodily injury sustained by students in interscholastic athletic competition or while engaged in school sponsored activities on campus. Tex. Educ. Code § 38.024.

¹⁷ A school district may purchase insurance to protect the district and the trustees individually for acts or omissions committed in the good faith discharge of official duties. Tex. Att'y Gen. Op. No. H-0070 (1973).

¹⁸ A school district may expend public funds for the defense of a trustee in a private lawsuit alleging a tort (e.g., a personal injury) if a majority of the disinterested members of the board make a good faith determination that a defense is in the public interest. A school district may not, however, expend public funds to represent the purely personal interests of an individual trustee. Tex. Att'y Gen. Op. Nos. DM-0488 (1998), JM-0968 (1988), H-0070 (1973). However, in a case involving an administrator filing suit against a third party for defamation related to improprieties in his duties, the attorney general determined that a district was prohibited from defraying the administrator's legal costs. Tex. Att'y Gen. Op. No. GA-0878 (2011).

¹⁹ If the trustee or employee is found guilty, the school district may not reimburse the defense costs. Tex. Att'y Gen. Op. No. JC-0294 (2000). A school district also has the authority to pay attorney's fees for a board member who sought legal representation for a criminal investigation that did not result in any criminal charges filed, provided that the board determines, subject to judicial review, that the payment will serve a public interest and not merely the member's private interest. Tex. Att'y Gen. Op. No. KP-0016 (2015).

A Flat Fee for Legal Services	Maybe. ²⁰
Election Contest Expenses	Probably not. ²¹
Employee Legal Fees in a Suit Against District	No. ²²
Private Party Legal Expenses	Probably not. ²³
Traffic Fines	Maybe. ²⁴
Claims or insurance when no district liability exists	No. ²⁵

Construction	Allowable expense of public funds?
Equitable Adjustment	Yes. ²⁶
Construction on Leased Property	Yes. ²⁷
Real Property Improvements	Yes, under certain circumstances. ²⁸
Bus Routes	No. ²⁹

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- ²⁰ The district must determine if the agreement meets the gift of public fund requirements and the expenditure provides a clear public benefit in return. What constitutes a clear public return benefit depends on a variety of specific circumstances and is a fact question subject to judicial review. Tex. Att’y Gen. Op. No. KP00-99 (2016).
- ²¹ Such a lawsuit typically involves only the trustee’s personal interest in seeking office, even when the school district benefits from the defense. Tex. Att’y Gen. Op. No. GA-0104 (2003).
- ²² Since the school was not liable and had no obligation to the non-prevailing employee, no public purpose would be served by the payment of attorney’s fees in a suit against the district. Tex. Att’y Gen. Op. No. GA-0062 (2003).
- ²³ A governmental entity may not reimburse a private party for litigation expenses unless the litigation serves a public purpose and the governmental body actually employs the attorney. Tex. Att’y Gen. Op. No. DM-0133 (1992).
- ²⁴ If a school district is liable for a civil penalty imposed upon it under Chapter 707 of the Texas Transportation Code (related to red light cameras), the district’s payment of that penalty would not violate the Texas Constitution. Tex. Att’y Gen. Op. No. GA-0747 (2009).
- ²⁵ The purchase of personal injury protection coverage or uninsured motorist coverage by a school district is unconstitutional. Tex. Att’y Gen. Op. No. H-0602 (1975). The use of public funds to pay claims for which no governmental liability exists is a prohibited gift of public funds. *State v. City of Austin*, 331 S.W.2d 737 (Tex. 1960).
- ²⁶ A contract for demolition of school building provided that the contract sum would be equitably adjusted if a “concealed condition” was encountered. The school district was not constitutionally prohibited from paying the contractor an additional sum for removal of additional slabs that constituted a “concealed condition” since the increase was pursuant to the contract and not in excess of the contract sum. *Olshan Demolishing Co. v. Angleton Indep. Sch. Dist.*, 684 S.W.2d 179 (Tex. App.—Houston [14th Dist.] 1984, writ ref’d n.r.e.).
- ²⁷ The Texas Constitution does not prohibit a school district from using public funds to construct buildings on leased property or from leasing school land to a private entity if the board of trustees determines that the expenditure or use of the thing of value serves a public purpose and places sufficient controls on the transaction to ensure that the public purpose is carried out. Tex. Att’y Gen. Op. No. GA-0321 (2005).
- ²⁸ School districts are authorized to expend school funds for the design, improvement, or construction of certain facilities on property owned by another entity, such as an institution of higher education or certain municipalities, if specified criteria are satisfied. Tex. Educ. Code § 45.109. Additionally, school boards are authorized to use district resources for design, construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. Tex. Educ. Code § 11.168.
- ²⁹ Private roads used by school buses may not be maintained through county or school funds. Tex. Att’y Gen. Op. No. DM-0013 (1991).

Impact Fees	Yes, if it meets certain requirements. ³⁰
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Charitable Contributions	Allowable expense of public funds?
Surplus Real Property Donation	Yes, under certain circumstances. ³¹
Gifts to organizations or individuals	No. ³²
Community Development	No. ³³
Education Foundation	Yes, if it meets certain gift of public fund requirements. ³⁴
Bus Routes	No. ³⁵
Impact Fees	Yes, if it meets certain requirements. ³⁶

³⁰ If a school district determines that paying an impact fee for city-requested infrastructure under Texas Local Government Code section 395.011 accomplishes a public purpose of the district and that it otherwise meets the requirements established by the Texas Supreme Court, the district’s expenditure of funds for city-mandated infrastructure will not violate the Texas Constitution. Tex. Att’y Gen. Op. No. GA-0850 (2011).

³¹ The board of trustees may authorize the donation of school property formerly used as a school campus to a state agency, county, city, or other non-profit entity under certain circumstances. The receiving entity, however, must continue to use the improvements for public purposes. The property reverts to the district if public use ends or the property is sold. The donation does not require that an “educational purpose” be found in the transfer, only that the real property and improvements have no current “educational purpose” for the school district. Tex. Educ. Code § 11.1541.

³² A political subdivision may not make gifts to organizations or individuals providing services to the district. Tex. Att’y Gen. Op. No. H-1123 (1978).

³³ Political subdivisions may not make donations to community development programs, chambers of commerce, or similar private corporations to fund the promotion of local businesses. Tex. Att’y Gen. Op. Nos. DM-0029 (1991), JM-1199 (1990). Becoming a dues-paying member of the chamber of commerce is not a legitimate use of funds of a political subdivision. *Kordus v. City of Garland*, 561 S.W.2d 260 (Tex. Civ. App.—Tyler 1978, writ ref’d n.r.e.); Tex. Att’y Gen. Op. Nos. DM-0029 (1991), H-0397 (1974). Nevertheless, if a contribution of funds or other resources to a community event or organization serves the powers, functions, or public purpose of the school district, the school board may determine that an expenditure meets the three-part test, even if the event is sponsored by the chamber of commerce or another nonprofit entity. Tex. Att’y Gen. Op. No. KP-0181 (2018) (approving use of city resources to support chamber event if three-part test met).

³⁴ A school district may supply an education foundation with office space and the use of other school property, as long as this serves a public purpose appropriate to the function of an independent school district, adequate consideration flows to the public, and the board maintains sufficient controls over the foundation’s activities, to ensure that the public purpose is actually achieved. Tex. Att’y Gen. Op. No. DM-0256 (1993).

³⁵ Private roads used by school buses may not be maintained through county or school funds. Tex. Att’y Gen. Op. No. DM-0013 (1991).

³⁶ If a school district determines that paying an impact fee for city-requested infrastructure under Texas Local Government Code section 395.011 accomplishes a public purpose of the district and that it otherwise meets the requirements established by the Texas Supreme Court, the district’s expenditure of funds for city-mandated infrastructure will not violate the Texas Constitution. Tex. Att’y Gen. Op. No. GA-0850 (2011).

Elections and Political Advertising	Allowable expense of public funds?
Political Advertising	No. ³⁷
Publishing Factual Information	Yes. ³⁸
Publishing a Link to Political Advertising	No. ³⁹
Transporting Students to Polling Sites	No, absent educational purpose. ⁴⁰
Transporting Employees to Polling Sites	No, unless employee is working on site. ⁴¹

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/use_of_public_funds.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.

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- ³⁷ Texas Election Code section 255.003 prohibits the use of public funds for political advertising. An officer or employee of a political subdivision may not *knowingly* spend or authorize public funds to be spent for political advertising. An officer or employee also may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that the person knows is false, and is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Violation of either prohibition is a Class A misdemeanor. Tex. Elec. Code § 255.003(a)-(c). *See also* Tex. Educ. Code § 11.169 (stating that the board of trustees of an independent school district may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.)
- ³⁸ Publishing information that describes the factual reasons for a measure but does not advocate the passage or defeat of the measure may be financed with public funds under Texas Election Code section 255.003. On written request of the governing body of a political subdivision that has ordered an election on a measure, the Texas Ethics Commission is required to prepare an advance written advisory opinion as to whether a particular communication relating to the measure violates these political advertising laws. Tex. Elec. Code § 255.003(e).
- ³⁹ Because the attorney general found no significant distinction between distribution of political advertising in print as opposed to distribution electronically through email or a website, the attorney general concluded that the use of public funds to link to a website promoting a specific candidate or measure would violate the Texas Education Code prohibition on electioneering and the Texas Election Code prohibition on political advertising using public funds. Tex. Att’y Gen. Op. No. KP-0177 (2018).
- ⁴⁰ While various statutes and administrative rules direct districts to promote voter education among students, the attorney general opined that, absent an educational purpose, a court would likely conclude that providing students transportation to the polling place serves no public purpose of the district and therefore violates the Texas Constitution. Tex. Att’y Gen. Op. No. KP-0177 (2018).
- ⁴¹ According to the attorney general, if a district employee has no responsibility or duty to perform on behalf of the district at the polling site, a court would likely conclude that funding transportation for employees to polling sites would serve no public purpose and therefore violate the Texas Constitution. Tex. Att’y Gen. Op. No. KP-0177 (2018).