LOOKING THE GIFT HORSE IN THE MOUTH:
DONATIONS, GIFTS, AND THE PUBLIC PURPOSE DOCTRINE

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The Minnesota Legislature has enacted numerous statutes aimed at maintaining public confidence in public officials and their use of public funds. This presentation will address common legal questions regarding donations and gifts, both to and from school districts. The presentation will focus on the public purpose doctrine, legal limitations on public expenditures, and school districts’ authority with regard to gifts and donations made by parents, community organizations, and booster clubs.

I. THE PUBLIC PURPOSE DOCTRINE

The most important thing to remember in this context is that all monies held by school districts constitute “public funds,” regardless of how they came into the district’s possession. This means that private donations become public funds immediately upon receipt by a school district.

It is well settled that for a school district’s expenditure to be valid, it must be: (1) for a public purpose; and (2) expressly or impliedly authorized by statute. See R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331, 336-37 (Minn. 1978). See also Visina v. Freeman, 89 N.W.2d 635 (Minn. 1958) and Perry v. Ind. Sch. Dist. No. 696, 210 N.W.2d 283, 286 (Minn. 1973). Both prongs of this test must be met in order for the expenditure to be valid.
A. The Expenditure of Public Funds must be for a Public Purpose.

The first prong requires that the expenditure be for a “public purpose.” The concept of public purpose is expanding and dynamic. A purpose that is considered public right now might have been considered private in the past. Conversely, an expenditure that may have been considered public in the past might now be considered private. There is no bright line rule.

In general, a school district expenditure serves a public purpose if it:

1. Benefits the community as a whole;
2. Is directly related to the functions of the school district, and
3. Does not have as its primary objective the benefit of a private interest.

The mere fact that some private interest may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public. Visina v. Freeman, 89 N.W.2d 635 (1958).

The Minnesota Attorney General has stated generally that a public purpose is construed to mean an activity that will serve to benefit the community as a body and at the same time is directly related to school district functions. Minn. Op. Atty. Gen. 107-a-3 (January 22, 1980).

School district routine expenditures, including paying salaries, are generally considered to be made for a “public purpose.”

Minnesota Courts have held that the “public purpose” doctrine should be “broadly construed to comport with the changing conditions of modern life.” RE Short Co. v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978).

B. The Expenditure of Public Funds Must be Authorized.

Note that the general rule is two-pronged. The second prong requires express or implied statutory authority for the expenditure. Like all municipalities, school districts possess no inherent powers. Rather, school districts possess only those powers that are expressly conferred by statute or implied as necessary in aid of those expressly conferred powers. See Mangold Midwest Co. v. Village of Richfield, 143 N.W.2d 813, 820 (Minn. 1966).
In order for an expenditure to be valid, it must be either expressly or impliedly authorized by statute. If none exists, then it must be determined that the expenditure is impliedly necessary and consistent with the exercise of some related express power in order for the expenditure to be proper.

1. *Express Authorization*

There are many statutes which expressly authorize school district to spend money for a variety of purposes. For example, Minn. Stat. § 123B.02 sets forth the general powers of independent school districts, providing: “The board's authority to govern, manage, and control the district; to carry out its duties and responsibilities; and to conduct the business of the district includes implied powers in addition to any specific powers granted by the legislature.”

If you are faced with an expenditure and are unsure whether it is authorized by statute, you are advised to contact your legal counsel to determine whether the expenditure is authorized.

2. *Implied Authorization*

The authorization can also be implied as necessary in aid of those expressly conferred powers. See *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966).

**II. THE MINNESOTA GIFT LAW**

There are statutory provisions specifically authorizing and regulating gifts/donations, both to and from school districts and school board members.

**A. Acceptance of Gifts and Donations.**

There are specific statutory provisions governing the receipt of gifts by public officials in cities and counties. See Minn. Stat. § 10A.071 & Minn. Stat. § 471.895. While those statutes do not apply to school districts, other statutes and administrative rules are directly applicable.

1. *School Districts are Generally Authorized to Accept Gifts/Donations*

School board are expressly authorized to “receive, for the benefit of the district, bequests, donations, or gifts for any proper purpose and apply the same to the purpose designated.” Minn. Stat. § 123B.02, subd. 6.
**NOTE** Remember, once a gift or donation is given to a school district it becomes public funds, and therefore must comply with the “public purpose” doctrine.

2. *Gifts from Sellers of Textbooks Generally Prohibited*

A School Board Member may not accept any monetary gift, property, or favor from any person, firm, or corporation which sells textbooks, any agent of such an entity, or any person financially interested in the sale of textbooks. Minn. Stat. § 127A.10. This includes superintendents, who are *ex officio* members of the Board. Minn. Stat. § 123B.143


The Code of Ethics for School Administrators, Minn. R. 3512.5200, prohibits school administrators (which includes principals, superintendents, and directors of special education and community education) from accepting any gratuities, gifts, or favors that impair their professional judgment. Those individuals are similarly barred from offering any favor, service, or property to obtain special advantage.

B. *Use of Public Funds for Gifts and Donations.*

As stated above, public funds may only be used for a “public purpose.” No matter how broadly the courts have construed that phrase, a gift to a private individual is never a valid public purpose. Generally, this means that a school district cannot donate funds to organizations outside its authority without specific statutory authorization. That includes such groups as 4-H, the Boy Scouts, and the Red Cross. The assumption is that the gift of public funds to a private entity serves a private not public purpose.

Issues arising in this area usually involve employee recognition events, employee events such as holiday parties, employee meals or snacks, or retirement gifts.

1. *Employee Recognition Events.*

A school board “may establish and operate an employee recognition program for district employees, including teachers, and may expend funds as necessary to achieve the objectives of the program. The
employee recognition program shall not include monetary rewards.” Minn. Stat. § 123B.02, subd. 14a (emphasis added).

2. **Employee Events.**

Employee parties or snacks will generally be considered impermissible gifts unless they are a part of employee compensation. The more specifically the school identifies the proposed event or benefit as part of employee compensation, the more likely it is to be viewed as a legitimate public expense.

3. **Retirement Gifts.**

Public funds spent on an outright gift upon retirement are not spent on a legitimate public purpose, as they go to the benefit of a private individual who will no longer be benefiting the District as an employee. However, retirement incentives such as paying out all accrued and unused sick leave upon retirement, are employee benefits, and treated as part of compensation.

4. **Rewards.**

A school board may “offer a reward to a person who provides accurate and reliable information leading to the conviction of a person who has committed or conspired to commit a crime against students or school employees, volunteers or board members as a result of their affiliation with the school district, or against school district property.” Minn. Stat. § 123B.02, subd. 22. The school board must have a formal policy in place before offering such a reward.

5. **Membership Dues.**

The position of the Minnesota Attorney General’s office is that a school district may not pay the membership fees for an employee to belong to the local Chamber of Commerce, Lions Club, Kiwanis, or similar organization. The rational was that such membership does not advance the educational mission of a district. However, under this rationale, a school district can pay the membership fees for an employee to belong to a professional organization because it does advance the district’s educational mission.
6. **Employee and school board member expenses.**

The general rule is that school board members and school district employees may be reimbursed for expenses that are directly related to their duties.

a. Employees.

   i. A school board has the power to authorize employees to attend and to pay for admission to conventions which will be helpful in the performance of their duties. *Lindquist v. Abbett*, 265 N.W. 54 (1936).

   ii. School board properly paid director of recreation and truant officer for expenses in attending conventions where there was no suggestion of arbitrary or capricious action or bad faith. *Id.*

   iii. A school board is authorized to reimburse an employee who appears as a witness in a legal action at a per diem rate, where the board determines the witness’s appearance was a statutory duty. Minn. Op. Atty. Gen., 161-a-6 (March 23, 1970).

b. School Board Members.

   i. A school board is authorized to reimburse a school board member a per diem rate for any day which he or she was engaged in the execution of statutory duties. Minn. Op. Atty. Gen., 161-a-6 (March 23, 1970).


v. A school board may authorize an imprest fund (“petty cash”) for the purpose of advancing officers or employees to pay for actual and necessary expenses in attending meetings outside of the district. Minn. Stat. § 123B.11.

**NOTE** Individual employees are not prevented from providing personal funds to pay for any of the above events or gifts. It is only the use of public funds that is prohibited.

III. BOOSTER CLUBS AND OTHER COMMUNITY ORGANIZATIONS

Booster clubs and other community organizations can provide important economic and non-economic support for a school district’s programs, athletic teams, and other extracurricular activities. But occasionally, these groups create serious issues for school districts. Often these issues arise because a district has not adequately defined or consistently expressed its expectations as to the role booster clubs will be allowed to play in relation to the operation of a district’s athletic and other extracurricular programs.

A. What is a “Booster Club?”

A booster club may vary in the form of organization from a loose and informal association of individuals who provide community and economic support for a school district’s extracurricular activities to a more formally organized group of persons such as, for example, a business association or even a non-profit corporation qualifying for tax exempt (Section 501 (c)(3)) status. No law or regulation defines what a booster organization is or what legal form it must take.

Booster clubs or organizations are, and must be, legally separate entities from school districts. Consequently:

1. A school board has no direct power to determine the manner in which a booster club is organized or operated.

2. A school district has no power to prohibit the formation of a booster organization.
3. However, a school district can exercise control over the manner in which a booster club interacts with the district’s coaches and students.

For example, a district can accept donations from an organization whether or not it has formally recognized the organization or has adopted a policy regarding how it will interact with booster organizations.

B. Accepting Booster Club Donations.

While booster clubs or other community organizations are usually created for the purpose of supporting a specific district program or extracurricular activity, the booster club cannot be allowed to control the activity. School boards have a duty, which cannot be delegated to any citizen or group of citizens, to “govern, manage and control” the business of the district and the interests of its schools, including its athletic and extracurricular programs. Minn. Stat. § 123B.02, subd. 1; Op. Atty. Gen. 159-B-4, Aug. 28, 1962.

Thus, from a legal perspective, a donor’s limitations on the uses to which a gift may be put is a more significant matter that the identity of the donor.

1. Generally, a gift or donation may be used for any purpose consistent with a school district’s general power to make expenditures.

As a practical matter, expenditures must be consistent with the educational mission of public school districts. A number of Opinions of the Minnesota Attorney General have discussed the proper expenditure of funds generated through gifts and donations to school districts. For example:


2. *School districts must be wary of donations that come with conditions or other strings attached.*

Often a gift is given subject to an express expectation that it will be used for a specific purpose. Unless the expressed purpose is consistent with the district’s authority and the school board is willing to use the gift for that purpose, it cannot accept the gift.

Even if the purpose is legally appropriate, there are situations when a school district may not wish to conform to the conditions attached to a gift. In such a situation, the gift should be respectfully declined, as using the gift or donation for a purpose that is inconsistent with the limitation may result in a lawsuit by the donor to recover the gift.

C. **COMMON ISSUES REGARDING BOOSTER CLUB DONATIONS**

1. *Supplementing the pay of coaches.*

There is no statutory prohibition against coaches accepting supplemental wages from boosters. However, some districts feel that allowing such payments weaken the authority of an activities director or principal over coaches by creating a divided loyalty.

If it is unacceptable to a district to allow booster club financial support for coaches, a policy prohibiting such support should be adopted. If such support is acceptable, consideration should be given to adopting a policy requiring disclosure to the school board of the amount of such financial support.

2. *Accounting for donated funds and equipment.*

Districts should give consideration to requiring that all gifts of funds or equipment by a booster club be formally recognized and accepted through a school board resolution.
Once a donation of funds or equipment is formally accepted, it becomes district property and must be accounted for through the business office in the same manner as all other district funds and equipment.

This procedure eliminates subsequent arguments as to the ownership of donated equipment or equipment purchased with donated funds.

3. **Use of district facilities, equipment and resources by the booster organization.**

Are booster organizations being given access to clerical or other support not made available to other community organizations? Such a situation exposes a district to claims that not all organizations are being treated equally and that public funds are being spent for an improper purpose.

This applies as well to the distribution of literature supporting the booster organization. The issue gets more complicated if the booster club expresses religious views in its literature.

4. **Influencing the selection and direction of players, coaches, and assistant coaches.**

In order to avoid claims that booster clubs and boosters are influencing the selection of players or their playing time, athletic/activities directors should ensure that coaches adopt written criteria and apply the criteria in making such decisions. Consideration should be given to adopting a policy requiring coaches to develop and implement such criteria.

Hiring decisions cannot be delegated to and should not be unduly influenced by booster clubs and boosters. Ultimately, the school district is responsible for the conduct of its coaches and assistant coaches.

D. **Booster Club Financing Issues.**

1. *What role, if any, should student athletes have in raising funds to support a booster organization?*
The concern is the appearance that being selected as a team member and the amount of playing time might be affected by a student’s willingness to make efforts to support a non-district organization.

2. *Is the purpose of the fundraising to generate funds that will ultimately support the district’s program or to support the booster organization and its programs?*

   Booster organization funds should not, in any event, be allowed to be commingled with district funds.

3. *What about camps and specialized training offered by booster organizations?*

   The appearance that participation in such camps or lessons is a prerequisite to being selected or to having play time.

   The risk that the participation of district employees (coaches and assistant coaches) in the camps or specialized training will establish a basis for liability for the district if a student is injured.

**IV. CONCLUSION**