



To Gift or Not to Gift (Public Funds): A Primer (ACT10)

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Public Scrutiny Test

- All funds received by the district:
 - Are considered public funds
 - Must be used to support the educational mission
- The best test to use when determining whether the expenditure is appropriate is called the “public scrutiny test.”
 - Question: Whether the tax-paying public would view the expenditure as necessary to support public education.
 - Answer: If you are already questioning whether the expenditure is appropriate, it may not be!

Public Funds Definition

- For purposes of state law, public funds are identified as any monies that are collected and retained in a district account. This includes all student activity dollars, which are designated as “quasi-public funds” and are subject to board of education direction and control in the same manner as all other district funds. Any “district” fund is considered public funds, unless the district is acting as a custodian for privately raised funds in a separately maintained agency fund or account.
- Funds maintained by associated student body organizations, or ASBs, are public funds subject to the constitutional gift clause.

Non-Public Funds Definition

- Dollars that are collected and retained by outside organizations such as parent and booster groups. This also includes collective bargaining association accounts.
- The district should not act as custodian for privately funded monies of a separately maintained agency fund or account, such as flower funds paid for exclusively by employee contributions, or profits from vending machines that are exclusively used and paid for by district employees.

California State Constitution Definition

- The use of public funds is strictly defined in the California State Constitution (Article 16, Section 6)
- Prohibits public agencies, including school and community college districts, from making a gift of public funds to any individual (including public employees), corporation, or even to another government agency.
 - Article 16 states that in the absence of a statute granting public local educational agencies (LEAs) the legal authority to make a special expenditure (e.g., for food, clothing, awards, etc.), “... the Legislature shall have no ... power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation ... whatever ...” Thus they cannot authorize any county, city, or other political subdivision to make any gift of public money to an individual, corporation, or other government agency.

Let's Be Accountable

- “Due to their unique operating environment, governments have a responsibility to be accountable for the use of resources that differs significantly from that of business enterprises. Although businesses receive revenues from a voluntary exchange between a willing buyer and seller, most governments obtain resources primarily from the involuntary payment of taxes.” (GASB White Paper: *Why Governmental Accounting and Financial Reporting Is – And Should Be – Different* (April 2013)).
- The prohibition against gifts of public funds is in place to ensure accountability to constituents and to prevent misuse of this public money.

Public or Private Purpose

- As the California Supreme Court explained in *City of Oakland v. Garrison* (1924) 194 Cal. 298, 302: Where the question arises as to whether or not a proposed application of public funds is to be deemed a gift within the meaning of that term as used in the constitution, the primary and fundamental subject of inquiry is as to whether the money is to be used for a public or private purpose. If it is for a public purpose within the jurisdiction for the appropriating board or body, it is not, generally speaking, to be regarded as a gift.
- The gift of public funds, such as any expenditure which benefits an individual or small class of individuals only, with no benefit to all of the residents of the political entity is prohibited.
- The purpose of the expenditure, not the recipient, is the most important factor to be considered.

Connection to Education?

- An expenditure that does not have an obvious benefit or connection to education of the district's pupils should be carefully reviewed.
- For purposes of approval of district orders for payment, a governing board's expenditure of funds will not be considered a gift of public funds if one of the following is true:
 - The Legislature has provided that a school board must or may make such an expenditure
 - The expenditure falls under a specified exemption (e.g., joint powers agreement)
 - The district's governing board has found and determined that the expenditure serves a public education purpose.

Consideration

- Importantly, an expenditure is not a “gift” within the meaning of the constitutional prohibition if the district receives adequate consideration in exchange for the funds expended.
 - Consideration is a benefit or something of value commensurate with amount of the payment.
- Courts have interpreted this provision to include all payments of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation.

Is the Expenditure in Code?

- LEA expenditures determined to be for a public purpose are generally authorized by statute. So if in Code....not a gift of public funds.
- In the context of public education, an expenditure serves a legitimate public purpose when it will directly and tangibly benefit the education of students in the district.
- To justify an expenditure of public funds, a district's governing board must determine that the expenditure will benefit the education of its students. If the governing board has reasonably determined that a particular type of expenditure serves a legitimate, and approved, public purpose, and is within the scope of the LEA's jurisdiction and purpose, courts will generally defer to the board's decision.
 - An LEA's jurisdiction does not extend to the aid of the indigent and the like, or the promotion of social welfare, though these may be lawful public purposes for other agencies.

Is the Expenditure in Policy?

- Expenditures driven by personal motives or moral obligations, or for noble or virtuous purposes such as a desire to convey compassion, sympathy, joy, or gratitude, are not justified and generally do not serve a primarily public purpose, and thus are likely unlawful gifts of public funds, even if they have been a longstanding custom locally or are based on benevolent feelings.
- If the LEA's governing board has determined that a particular type of expenditure serves a public purpose, courts will almost always defer to that finding.
- Thus, if the district has a board policy or resolution stating that specific items are allowable (e.g., scholarships or donations), there is more certainty that the expenditure might be considered allowable.

Can't Merely be for Goodwill

- The board policy or resolution should state the reasons that the board has determined that the expenditure serves a public purpose.
- Even if an expenditure incidentally benefits an individual, it is not a gift if it serves a public purpose of the district.
- The public purpose must be something more tangible than abstract “goodwill” or “public relations.”
- It is up to the school district governing board to determine whether it has a legitimate public purpose other than mere goodwill to justify a public expenditure.

Reminders:

- School districts and their employees are prohibited from using public funds for private purchases and expenses.
- In general any use of school district funds that is not either expressly or impliedly legally authorized is unlawful.
- Districts should consult legal counsel if they believe an expenditure could be construed as a gift of public funds.

Examples to Consider

- There are various circumstances when a decision must be made about whether a particular expenditure is a gift of public funds. Let's talk about some common scenarios and examples that reflect current executive, administrative, and judicial interpretation of this legal principle.

Unallowable Expenditures

- A social gathering where a meal is provided for employee recognition such as for teacher appreciation, secretary day, etc.
- Contributions or donations to religious, community, charity, or other non-profit groups
- Purchase of flowers for personal gift
- Giving of flowers or items to convey compassion, sympathy or meet a perceived moral obligation
- Presents or gifts to anyone including employees, volunteers, or students
- Alcohol
- Holiday or other staff parties or picnics
- Employee reimbursement for mileage from their residence to their place of work

Allowable Expenditures

- School furniture, supplies and equipment
- Teacher and faculty salaries
- Uniforms and regalia for school bands, choirs or athletic teams
- Caps and gowns for graduation ceremonies
- Instructional materials and textbooks
- Maintenance of buildings and facilities
- Research and promotional activities to advance public education
- Awards to students for excellence or to employees for exceptional contributions (if in board policy)
- Flowers or decorations for a district awards ceremony or commemorative event
- Transportation for students living in outlying parts of the district
- Refreshments/meals for meetings for the purpose of conducting school business (e.g., curriculum meeting during lunch)
- Snacks, refreshments and food for students in the course of the school day that are deemed to contribute to the educational process (e.g., during testing)

What can Happen?

- Districts and public officials can face potential legal liability, including taxpayer lawsuits, civil and criminal penalties, and the loss of public confidence, for the misuse or improper expenditure of public monies. (See Gov. Code § 8314; Pen. Code § 424.)
- The California Supreme Court also held that public officials may be held personally liable if they fail to exercise due care and reasonable diligence in authorizing the expenditure of public funds.
- Whether or not an official has acted with due care depends on various factors including, for example, whether the expenditure's impropriety was obvious or not, whether the official was alerted to the possible invalidity of the expenditure, and whether the official relied upon legal advice in making the expenditure.

Conclusion

- As public agencies, school and community college districts are subject to the constitutional prohibition against gifts of public funds.
- In reviewing proposed expenditures, districts should exercise due care and diligence in determining whether or not a particular expense serves a primarily public purpose.
- Although the analysis may be somewhat confusing and unclear at times, in the world of public education, expenses are most likely justified when they will directly benefit the education of students in the district.
- The best way to guard against gift of public funds issues is through board policy.

Any Questions?

Thank You for Attending!