

Education Foundations: Your Relationship with the School District

UNDERWOOD

Presented by:
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The Devoted Donor

The Foundation received a substantial donation to upgrade the baseball field turf, stands and renovate the boys' locker room. We told the superintendent we also have a contractor all lined up and ready to start the work. The Superintendent thinks this idea sounds great, but the school's lawyer thinks this could be a problem. How is this problem?

Title IX

- Title IX regulations require schools to provide equal athletic opportunity to members of both sexes. 34 C.F.R. § 106.41(c).
- When a school offers athletic teams, Title IX regulations require that the school offer equivalent benefits, opportunities, and treatment overall to teams for boys and girls.
- If the Foundation provides benefits to athletes of one sex, the school is obligated to ensure that benefits and services remain equivalent for both sexes.
- “[A] public university cannot avoid its legal obligations by substituting funds from private sources for funds from tax revenues. Once a university receives a monetary donation, the funds become public money, subject to Title IX’s legal obligations in their disbursement.” *Chalenor v. University of North Dakota*, 291 F.3d 1042, 1048 (8th Cir. 2002).

Title IX

- While significant discrepancies in specific same-sport benefits (i.e., baseball vs. softball) may indicate potential compliance problems, Title IX is intended to ensure overall equivalence in athletic opportunities and benefits, not single sport equivalence.
- In determining whether equal opportunities are available factors that are considered include:
 - The provision of equipment and supplies;
 - Scheduling of games and practice time;
 - Travel and per diem allowance;
 - Opportunity to receive coaching and academic tutoring;
 - Assignment and compensation of coaches and tutors;
 - Provision of locker rooms, practice and competitive facilities;
 - Provision of medical and training facilities and services;
 - Provision of housing and dining facilities and services;
 - Publicity.

Purchasing / Procurement

- If goods or service are purchased directly by the Foundation and then donated to the District, procurement laws are not applicable.
- Also consider District policy and procedures for accepting donations.
- If the Foundation is donating the money and the District is purchasing the goods or services, the District must still comply with procurement laws.
- With limited exceptions, all District contracts for the purchase of goods and services, including construction services, valued at \$50,000 or more in the aggregate for each 12-month period must be made through one of the statutory competitive procurement methods that provides the best value to the District. Tex. Educ. Code § 44.031; Tex. Gov't Code, Ch. 2269.

Frazzled Foundation Director

The Foundation Board President tells the Executive Director she needs to devote all her time over the next two weeks planning the upcoming gala and developing a proposal for an employee giving campaign. The Superintendent tells the Executive Director it is illegal for her to devote all her time to the Foundation, and she needs to facilitate PTO events this week and complete a grant application by next Friday. What does the Director do?



District Support of an Education Foundation

- Texas Constitution prohibits granting public money for a private benefit ("gift of public funds").
- Provision of office space, personnel, copying, mail, equipment, supplies, and other contributions may be allowed only in limited circumstances, if:
 - Arrangement serves proper public educational purpose
 - Adequate controls exist to ensure public educational purpose is served
 - The District receives some return benefit (i.e., accomplishment of its public purpose). Tex. Att'y Gen. Ops. DM-256 (1993); MW-373 (1981); GA-252 (2004).
- Determination is subject to judicial review.

Use of District Employees

- District staff must be selected, supervised and evaluated by the Superintendent
- Foundation staff should be selected, supervised and evaluated by Foundation board
- There is no authority for a public entity to hire an employee to work for another entity, as it is an unconstitutional appropriation of public money. Tex. Att'y Gen. Op. MW-373 (1981); DM-256 (1993). To avoid constitutional violation, apply test above.

Use of District Employees

- Foundation employee ineligible for Teacher Retirement System if more than half of work is for the foundation. Tex. Att'y Gen. Op. MW-373 (1981); 34 TAC § 25.1.
- Full-time District employee meets TRS eligibility if working 20 hours or more for school district each week and for four and one-half months or more. If there is no equivalent full-time position, minimum number of hours required per week to qualify the position for TRS membership is 15.
- Charter school employee entitled to TRS eligibility based on same criteria.



The Curious Community Member

The District received a public information request for a list of all the Education Foundation's donors for the 23-24 school year including their email addresses and the amount of each donation. The Foundation does not want the District to share this information. Does the Foundation have to respond?

Access to Foundation Information

- Access to records of a nonprofit organization
- Access under the Public Information Act, if applicable
- Does the District have the right to access Foundation records through an agreement between the entities?

Texas Public Information Act

- Provides the public access to:
 - Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business; and
 - Held by or for a governmental body

Tex. Gov't Code 552.002

Texas Public Information Act

- "Governmental body" includes the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or is supported in whole or in part by public funds.
- "Public funds" means funds of the state or of a governmental subdivision of the state.
- Tex. Government Code 552.003

Texas Public Information Act

If the Act applies to your organization ...

- Review and **respond to written requests** for information in accordance with the procedures of the Act.
- Submit **timely request for Open Records Letter Ruling** if you believe an exception to the Act applies
- For guidance: Texas Public Information Act Handbook (available on Texas Attorney General's website)

Texas Public Information Act Exceptions

- Tex. Gov't Code Section 552.101 **excepts information from disclosure that is confidential by law** (constitution, statute, or judicial decision).
- *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998) - Texas Supreme Court determined that the First Amendment **right to freedom of association** could protect an advocacy organization's list of contributors from compelled disclosure.
- Relied upon by AG Letter Rulings to withhold donor identity

Texas Public Information Act Exceptions

- Tex. Gov't Code Section 552.137 – an **email address** of a member of the public that is provided for the purpose of communicating with a governmental body is confidential and not subject to disclosure.

Financial Records

- Nonprofit corporations required to maintain “current and accurate financial records with **complete entries as to each financial transaction of the corporation, including income and expenditures**, in accordance with generally accepted accounting principles.” Bus. Org. Code 22.352(a)
- Board of directors must annually prepare or approve a financial report for the preceding year. Bus. Org. Code 22.352(b)
- Must be **available to the public for inspection** for 3 years.



The Campaign Conundrum

The Education Foundation wants to invite a current school board member who is running for re-election to emcee the Foundation's upcoming gala. The Superintendent tells the Foundation he's concerned that is not allowed because the event will be held at the District's event center and electioneering is not allowed on school property. Does the Superintendent have valid concerns?

Campaign Speech

- A school board is prohibited from using state or local funds or other district resources to electioneer for or against any candidate, measure, or political party. Tex. Educ. Code § 11.169.
- An officer or employee of a school is prohibited from knowingly spending or authorizing the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).

Campaign Speech – Political Activity

- An exempt organization is prohibited from directly or indirectly participating in or intervening in a political campaign on behalf of a candidate for office.
- Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office violate the prohibition against political campaign activity.
- Certain voter education activities conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.
- A candidate forum where all candidates are invited to speak, and the organization is not endorsing a particular candidate likely will not be considered prohibited political activity.

Campaign Speech – Legislative Activity

- A 501(c)(3) may maintain exempt status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.
- Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.
- “Substantial” is measured based on consideration of a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Questions?
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