



**Best Practices for Working with School
District Support Organizations
(Education Foundations,
Booster Clubs, and PTOs)**

Anthony Contente-Cuomo, Udall Shumway PLC

Kristin Mackin, Sims Murray Ltd.

Holly Frook Graham, Arizona Auditor General's Office

Susan Myers, Arizona Attorney General's Office

Types of School District Support Organizations

- Education Foundations
- Booster Clubs
- PTOs
- Others?

Education Foundation

What is it?

- An Education Foundation is an organization, typically a non-profit corporation, founded by private individuals for the purpose of promoting the overall educational mission of a local school district.

What does it do?

- Promote the district within the community
- Sponsor and administer fundraisers
- Donate to the district
- Award gifts, grants, and scholarships to teachers and students

PTO

What is it?

- A PTO (or Parent-Teacher Organization) is an organization, preferably a non-profit corporation, organized by a group of parents and teachers to provide support for a specific school within the district.

What does it do?

- Promote the school within the community
- Encourage communication between the school, parents and teachers
- Sponsor and administer fundraisers and other events
- Donate to the school

Booster Club

What is it?

- A booster club is an organization, preferably a non-profit corporation, typically founded by a group of parents to support a specific activity (athletic team, extracurricular club or student organization) at a school.

What does it do?

- Promote the activity within the community
- Encourage communication between parents and the activity's director (sponsor, coach, or teacher)
- Organize and coordinate parental involvement with the activity
- Sponsor and administer fundraisers and events for the activity
- Donate to the school district for the activity

BEST PRACTICE!

- Each one of these different types of school district support organizations should be a non-profit corporation.
- They can be stand-alone non-profit corporations or may be under an umbrella non-profit corporation.
- Not all entities calling themselves foundations or even non-profits are actually non-profit corporations.
- Always check - Look them up on the Corporation Commission's website: <http://starpas.azcc.gov>

Why should these organizations be non-profit corporations?

- Taxes and Tax I.D. Numbers:
 - These organizations cannot use the District's tax identification number for any purpose (such as opening a bank account or fundraising)
 - If they are not non-profit corporations, then donations to these organizations will not be tax deductible (the District's charitable status does not flow through)
 - If they are not non-profit corporations, someone (the parents?) will have to pay taxes on the organization's income (including all of the money collected through fundraising)

What are the Requirements for Forming a Non-Profit Corporation

- The entity must file Articles of Incorporation with the Arizona Corporation Commission.
- The Articles of Incorporation must contain:
 - The name of the corporation
 - A brief statement of the character of affairs that the corporation intends to conduct
 - The name and address of each person who is to serve as a director until a successor is elected and qualifies.
 - The name, street address and signature of the corporation's statutory agent.
 - The name and address of each incorporator.
 - Whether or not the corporation will have members.
 - The signatures of all incorporators (only one person is required to be an incorporator).
- Those Articles of Incorporation must be published in a newspaper of general circulation for three (3) consecutive publications.
- After the non-profit corporation is formed, the organization can seek 501(c)(3) status from the Internal Revenue Service.

Arizona Constitution's Gift Clause

Article 9, Section 7 of the Arizona Constitution provides:

Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for the investment of the monies in the various funds of the state.

Can a School District form a Non-Profit Corporation?

- Consider the Gift Clause prohibition:

A political subdivision (such as a school district) shall not “. . . become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law. . . .”
- “School boards have only the authority granted by statute, and such authority must be exercised in a manner permitted by statute.” *Campbell v. Harris*, 131 Ariz. 109 (App. 1981).
- The answer to this question depends on whether there is a statute authorizing a school district to form a non-profit corporation.

A.R.S. § 11-952

- A.R.S. § 11-952 authorizes two or more public agencies (including school districts) to “form a separate legal entity, including a nonprofit corporation, . . .”
- It requires an intergovernmental agreement between two public agencies.
- It also limits the non-profit corporation to the exercise of powers that the public agencies themselves could independently exercise.

So can a School District form a School Support Organization?

- Other than as authorized by A.R.S. §11-952, a school district cannot form or be a member in a non-profit corporation (or any other company or legal entity).
- A school district cannot form a separate legal entity to take action that the school district itself is not statutorily authorized to take.
- So the answer to this question is No.

Can a School District assist with the formation of a School Support Organization?

- Consider the Gift Clause Prohibition:
A political subdivision (such as a school district) shall never “. . . give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation. . . .”
- The answer to this question may depend on what “assist” means.

- Helping to pay for the costs of incorporation?
No. - Utilizing public monies to assist with the organization's incorporation or formation costs would violate the Gift Clause.
- Paying for or providing CPA or legal services necessary for formation?
No. - Paying for or providing CPA or legal services to a private entity would violate the Gift Clause.
- Drafting the Articles of Incorporation?
No. - Spending a District employee's time to draft legal documents for a private entity would violate the Gift Clause (in addition to just being a really bad idea).

So what can a school district do?

- The school district may provide guidance for establishing and operating school support organizations, clarifying the relationship between such support organizations and the school/district administration, and requiring adherence to school district policies.
 - The school district may require school support organizations to be recognized 501(c)(3) non-profit corporations or covered under a qualified umbrella non-profit corporation.
 - The school district may require all school support organizations to follow district policies and procedures, such as:
 - facility rental policies
 - gift and donation policies
 - staff ethics policies
 - insurance requirements
 - conflict of interest policies
 - technology use policies



After Formation

- After a school support organization is formed, can District employees or Governing Board Members serve on the support organization's board?
- Not a best practice.
 - Governing Board Members would have a conflict of interest for any agenda items relating to that support organization.
 - Also, a School District Governing Board cannot appoint members to a private organization's board.
 - Employees can serve on the organization's board, but only on their own time and without expending any District resources.
 - Employees must avoid giving the impression that they serve "on behalf of" the school or district.

Activity Sponsors



- The school employee sponsoring a club or activity (teacher, coach, band director, etc.) should not serve on the Booster Club Board for that activity.
- Doing so creates a conflict of interest and gives the appearance that the district is directing the activities of the private organization.

Can a School District perform services for its school support organizations?

- Even if the support organization paid the district (at fair market value) for those services (as required to avoid a Gift Clause violation), there is no statutory authority for a school district to sell its services to a private entity.
- Per A.R.S. §15-1108, school districts may provide district services to other school districts, charging users on a cost reimbursement basis, but this statute does not authorize selling those district services to private entities.

So what can a school district do with and for its support organizations?

- **Facility Use Agreements**

- A.R.S. §15-1105 permits a school district to “lease school property, including school buildings, grounds, buses and equipment, to any person, group or organization for any lawful purpose, including recreational, educational, political, economic, artistic, moral, scientific, social, religious or other civic or governmental purpose in the interest of the community, including extended day resource programs.”
- The District is required to charge a “reasonable use fee,” set by the Governing Board, and lessees must provide proof of adequate liability insurance.

Uncompensated Use of School Property

- Per A.R.S. §15-1105(B), the governing board may permit the uncompensated use of school property “by any school related group . . . or by any organization whose membership is open to the public and whose activities promote the educational function of the school district.”
- The Governing Board, in an open meeting, must find in good faith that the school support organization meets these criteria.
- The school support organization would still need to provide proof of liability insurance.
 - The District cannot purchase liability insurance for the school support organization or extend its own insurance to such organizations (this would violate the Gift Clause).

Donate Surplus Equipment

- A.R.S. §15-342(18) permits a district governing board to “donate surplus or outdated learning materials, educational equipment and furnishings to nonprofit community organizations where the governing board determines that the anticipated cost of selling the [materials] equals or exceeds the estimated market value of the materials.”
- Assuming the school support organization is a non-profit corporation (as it should be), it would qualify to receive these materials.

- The Governing Board must, in an open meeting, determine that the cost of selling the materials is equal to or more than the estimated market value of the materials, explaining the objectively reasonable basis for its determination.
- The District would need to make a good faith effort to determine market value (i.e., searching on online auction sites, using IRS guidelines, or obtaining an appraisal), and include in its determination the costs of selling the materials (i.e., commissions, appraisals, advertisement, transportation, and/or refurbishment).

Fundraising

Fundraisers should be sponsored and conducted by the school support organizations or by the student clubs themselves; not by the school district.

Golf Tournaments:

- Keeping in mind that school districts may only act in accordance with statutory authority, there is no statute authorizing a school district to sponsor fundraisers such as golf tournaments.

Raffles:

- A school district cannot sponsor, host, participate, offer, sell tickets or in any other way engage in a raffle.
- A school support organization, assuming it is a non-profit corporation in existence for at least five years, may be able to conduct a raffle if the organization meets the statutory requirements of A.R.S. §13-3302(B).

Comingling Finances

- School support organizations are private entities. They are not part of the district.
 - The district cannot manage the monies of a private entity.
 - The district cannot deposit the private entity's monies into the district's accounts.
 - The district cannot co-mingle private monies with public monies in its accounts.

Donations

- All monetary donations from a school support organization must be made to and accepted by the District Governing Board. *See Attorney General Opinion 189-076, 185-110.*
- Non-monetary gifts should also be made to and accepted by the Governing Board. *See id.* This helps avoid potential conflicts of interest, violations of staff ethics policies, and AIA Rules violations.



Where does the money go?

When a school support organization donates money to a school or district, that money instantly becomes “public money” – with all the limits and regulations that apply to public money.

- A.R.S. §15-341(A)(14) requires that “all monies received by the district as gifts, grants and devises” be deposited with the County Treasurer “who shall credit the deposits as designated in the uniform system of financial records.”
- But A.R.S. §15-1224 permits the Governing Board to deposit in a separate bank account gifts and grants of less than \$1,500 which are designated for use by a teacher for instructional purposes.

What if the donation has strings attached?

- The District can honor the intention of the donor so long as it is within the District's statutory powers and does not violate other applicable laws. *See, e.g.,* Attorney General Opinions I10-003, I00-005.
- As long as it is not inconsistent with the intentions of the donor, any money left over after the intended purpose of the donation is achieved shall be used for the reduction of school district taxes for that budget year. *See* A.R.S. §15-341(A)(14).

Coordination

Coordination with school support organizations is necessary and expected, but it is important that everyone recognize and maintain the separate identities of the school districts and such organizations.

- Just as the district should not be paying for the support organization's expenses, the support organization should not be directly paying district employees or district expenses.
- School support organizations may jointly participate in events with student organizations. But any funds raised through such joint activity must be allocated proportionately to the appropriate student activities fund. *See Attorney General Opinion 184-032.*

Coordination

Not a Best Practice

- Boosters charge fees for a student's participation in an extracurricular activity.
- Boosters pay stipends or salaries to district employees or their relatives.
- Boosters pay the direct expenses of the activity (equipment, consultants, travel, competition fees, etc.)
- Foundation donates monies to the district for student scholarships.

Best Practice

- All extracurricular activity fees are charged by and paid to the district. *See A.R.S. §15-342(24)*
- Boosters donate monies to the district and designate the purposes for those donations.
- Boosters donate monies to the district and designate the purposes, or donate the actual equipment to the district.
- Foundation scholarship monies are paid directly out of Foundation accounts.