

SCHOOL AND COLLEGE LEGAL SERVICES

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THE LEGAL UPDATE

October 26, 1992

To: Superintendents, Member School Districts (K-12)

From: Robert J. Henry *RJH* General Counsel

Subject: Acceptance of Gifts
Memo No. 22-92

We have received a number of requests for advice relating to the acceptance of gifts to the district. This memorandum addresses several of the more frequently asked questions.

I. Is It Legal For A Public Agency to Solicit or Encourage Gifts to the Agency?

Yes. Education Code Section 35160 (the so called "permissive education code section") authorizes the governing board of each school district to engage in any school related activity that is not prohibited or preempted by any other law.

No provision of state or federal law prohibits or preempts a district from encouraging private persons or agencies to contribute funds or supplies to the district. Thus, the district has permissive authority to engage in such activity.

It is important to note, however, that the governing board of each district retains the right to approve or not of any "gift-giving" campaign that is conducted in the name of or on behalf of the district. (See Education Code Section 51521.)

It is also important to note that donations must be voluntary in order to be considered a gift.

A "mandatory" gift is in fact a fee. A public school district is limited in its ability to assess mandatory fees.

II. What Qualifies As A Gift for Tax Deduction Purposes?

For taxpayers who itemize their deductions the United States Internal Revenue Code (I.R.C.) permits a deduction (within

limits not applicable to most taxpayers) for a "contribution or gift to or for the use of ... any political subdivision [of a state] ... but only if the contribution or gift is made for exclusively public purposes." (26 U.S.C. Section 170(c)(1))

Under California law, public school and community college districts are agencies of the State of California. Thus, gifts made to the district may be claimed as a deduction by the donor of the gift, so long as the gift is "exclusively for public purposes." The case law that exists under Section 170 of the I.R.C. demonstrates that while a charitable gift can be designated for a particular purpose such as "6th grade outdoor education" or "scholarships for needy students," it cannot be used as a substitute for the payment of a required fee or made payable to only certain identified students.

By way of example, a gift made to a district in lieu of a required transportation fee is not a charitable gift. Similarly, a gift to a public school to be used as a "scholarship" for a particular student (typically a child, relative, or business associate of the donor) is not a charitable gift within the meaning of the I.R.C.

III. Who May Accept A Gift?

Former Sections 35273 and 35274 of the Education Code used to provide authority for the governing board to accept gifts on such conditions as are acceptable to the governing board. These sections were repealed in 1987 (Chapter 1452) as part of an effort to "streamline" the Education Code by removing sections that were no longer necessary in light of the "permissive" Education Code embodied in Section 35160.

Thus, the authority to accept a gift belongs to the school board under Education Code Section 35160. (See also Section 41032.)

This means that all gifts should either be presented to and acted upon by the governing board in public session or accepted by a designee of the Board pursuant to established written policy of the Board.

IV. Audit Guidelines Re Handling of Funds

For obvious reasons, gifts of cash should be discouraged and accepted only under conditions that are acceptable to your auditor.

To assure tax deductibility, gifts made by check should be made out to the name of the district and not the name of a classroom teacher or other employee of the district.

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THE LEGAL UPDATE

December 20, 1994

To: Superintendents, Member School Districts (K-12)

From: Robert J. Henry, General Counsel

Subject: Acceptance of Gifts
Addendum to Legal Update Memo 22-92

As part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted new requirements with respect to claiming deductions from income tax for certain deductions based on gifts to charitable organizations. The new law at issue, Internal Revenue Code § 170(f), provides in pertinent part that a taxpayer deduction shall not be allowed by the IRS for gifts or contributions of \$250 or more made to an organization or trust unless the taxpayer substantiates the contribution. Substantiation, which will issue from the organization receiving the contribution, must include the following information.

- i. the amount of cash;
- ii. a description (but not value) of any property contributed and whether the recipient organization provided any goods or services in consideration for the property contributed;
- iii. a description and good faith estimate of the value of any goods or services referred to in item ii above.

Therefore, if any member districts are the recipients of cash, goods or services in excess of \$250 in value, the contributor may request that the district substantiate or acknowledge the contribution. As noted above, if the contribution consists of cash, the district should substantiate the amount of the donation. On the other hand, if the contribution consists of property, a description of the property, but not its value, is to be provided by the district. If the district provides goods or services in exchange for a contribution of property, then the district must provide a description and good faith estimate of the value of the goods/services bestowed upon the donor. By way of example, if a district receives a "contribution" of a new public address system in exchange for the donors' use of the school's multi-purpose room, the district is required to make a good faith estimate of the value

of the use. This will enable the IRS to determine whether a tax deductible donation of property actually occurred.

Should you have questions concerning the issue of gifts, please refer to Legal Update Memorandum 22-92, or feel free to contact our office.

RJH:sml