



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>March 11, 2010</p>	<p>No. 110-003 (R09-040)</p> <p>Re: School Districts' Provision of Food, Beverages, or Refreshments to Staff and Parents</p>
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To: David J. Cantelme
Cantelme & Brown, P.L.C.

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), this opinion revises the opinion that you prepared for Glendale Elementary School District ("District") regarding the District's ability to provide food, beverages, or refreshments to staff and parents participating in school activities after hours and weekends. We issue this opinion to provide guidance concerning this matter to all school districts within Arizona.

Questions Presented

Can the District provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized District activities after normal school hours or on weekends?

Summary Answer

The District may provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized District activities after normal school hours or on weekends only where and to the extent the District is authorized to do so by the laws pertaining to travel and subsistence, gifts, grants (including federal grants), or devises. The District may also include terms regarding the provision of food, beverages, or refreshments in employment contracts with some limitations. Such expenditures must comply with the Gift Clause of the Arizona Constitution.

Background

The District provides food, beverages, or refreshments to staff and parents who assist in governing board-authorized District activities after normal school hours or on weekends. The District does not use funds generated by taxpayers to do so. Instead, the District uses funds generated primarily from 1) gifts and donations earmarked for food and beverages or left to the governing board's discretion; 2) rentals of facilities; and 3) grant monies that require outreach efforts and allow for food expenditures.

Section 15-341(A)(14) allows school district governing boards to accept gifts, grants, and devises and spend the money for the donor's intended purpose. A.R.S § 15-1105(E) allows school districts to lease school property and use the generated funds for civic center school purposes. Governing boards may expend surplus monies in the civic center school fund for maintenance and operations or unrestricted capital outlay after they cover the expenses of the civic center fund. A.R.S § 15-342(29). Finally, school districts may expend federal grants they receive in accordance with the purposes of the grant. A.R.S. § 15-207(B).

Analysis

A school district governing board's powers are limited to those that the Legislature has expressly or impliedly conferred upon it. *Tucson Unified Sch. Dist. No. 1 v. Tucson Educ. Ass'n.*, 155 Ariz. 441, 442-43, 747 P.2d 602, 603-4 (App. 1987); Ariz. Att'y Gen. Op. I00-022. The statutes concerning the authority of school district governing boards focus on the districts' responsibility to educate children. Ariz. Att'y Gen. Op. I00-022; *see also Prescott Community Hosp. Comm'n v. Prescott Sch. Dist. No. 1*, 57 Ariz. 492, 494, 115 P.2d 160, 161 (1941) (stating that a school district's purpose is to promote the education of the State's youth, and its granted powers are intended to meet that purpose). Although the District uses only the non-taxpayer sourced funds identified above for refreshments, these funds are deposited with the county treasurer and constitute public funds. A.R.S. §§ 15- 341(A)(14) & (19), -996, -1105(E); Ariz. Att'y Gen. Op. I91-003. Therefore, school districts must expend these public funds in a manner that relates to the districts' legal purpose and complies with their express and implied authority. Ariz. Att'y Gen. Op. I00-022. Moreover, any expenditure of public funds must comply with the Arizona Constitution's Gift Clause. *Id.*; Ariz. Const. art. IX, § 7.¹

I. Providing Subsistence to Staff.

There is no express statutory scheme that addresses the means by which a school district may provide food or beverages to staff, except for the provisions relating to the reimbursement of expenses for subsistence when staff members travel for a school purpose. A.R.S. § 15-342(5); *see also* Ariz. Att'y Gen. Op. I90-077 (analyzing A.R.S. §§ 15-342(5), 38-621 to -622 and

¹ Article 9, section 7 of the Arizona Constitution states the following:

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 investment of the monies in the various funds of the state.

concluding that “school district monies . . . may not be used to purchase meals for administrators attending such board meetings because . . . persons are eligible for subsistence only when traveling away from their ‘designated post of duty’”). Section 15-342(5) permits school district superintendents, principals, or their representatives to travel for a school purpose as determined by their school district governing boards and requires any expenditures for travel and subsistence to comply with A.R.S. §§ 38-621 through -627. A.R.S. § 15-342(5).² School district governing boards may designate teachers and other district employees as superintendent or principal “representatives” for purposes of the statute. Ariz. Att’y Gen. Ops. I79- 077, 66-23-L, & 61-47.³

Staff subsistence is allowed when staff members are away from their “designated post of duty.” A.R.S. § 38-621(A). The “designated post of duty” is “where one’s desk is situated and where primary employment duties are performed.” Ariz. Att’y Gen. Op. I79-152. Therefore, as a general rule, when school district staff attend meetings or other activities at their designated post of duty, they are not entitled to subsistence as defined by A.R.S. § 15-342(5). Ariz. Att’y Gen. Op. I90-077.

The non-taxpayer source funds from the rentals of facilities pursuant to A.R.S. § 15-1105(E) are subject to these restrictions when used for maintenance and operations purposes. School districts must first use the monies from rentals of facilities for civic center school purposes.⁴ A.R.S. § 15-1105(E). Any excess monies may be expended for maintenance and operations or unrestricted capital outlay pursuant to A.R.S. § 15-342(29). Maintenance and operations expenditures may include the provision of refreshments as long as the expenditures

² The term “school purpose” has not been defined precisely and is a determination left to the discretion of the school district governing board so long as the governing board does not act in a manner that is arbitrary or capricious. Ariz. Att’y Gen. Ops. I61-47, I79-007.

³ For district employees not traveling as representatives pursuant to A.R.S. §15-342(5), their entitlement to reimbursement is governed by A.R.S. §§ 38-621 and -622. Ariz. Att’y Gen. Op. I61-47.

⁴ Civic center school purposes include those expenses incurred by the school district in meeting the needs of the program established by A.R.S. § 15-1105. See A.R.S. §§ 15-342(29), 15-1105.

comply with the restrictions for travel and subsistence identified in A.R.S. §§ 15-342(5), 38-621 and -622. *See* Ariz. Att’y Gen. Op. I90-056 (stating that maintenance and operations funds could be used for refreshments for self-insurance trustees subject to the restrictions of A.R.S. §§ 15-342(5), 38-621 and -622).

However, statutory provisions regarding the use of certain funds may provide exceptions to the above restrictions. For example, school districts have the express authority to spend federal grant monies in accordance with the purposes of and in the manner set forth in the grant. A.R.S. § 15-207(B); Ariz. Att’y Gen. Op. I82-121. Although the federal grant statute does not specifically authorize the school districts to provide food and beverages, such authority may be implied where it is consistent with the intended purpose of the funds. *See Maricopa County v. Douglas*, 69 Ariz. 35, 39, 208 P.2d 646, 648 (1949) (stating that the legislative intent of a statute includes that which is necessarily implied as well as what is expressed) ; Ariz. Att’y Gen. Op. I88-031. Therefore, if a federal grant specifies that the monies may be expended for food and beverages for staff or volunteers, a school district may do so. The school district must still comply with all applicable state laws, including procurement requirements, unless federal law provides otherwise respecting a particular grant or program. Ariz. Att’y. Gen. Op. I82-121. School districts must also ensure that the expenditure of funds for refreshments does not constitute a gift of public funds. Compliance with the Gift Clause requires that the expenditure of public funds be for a public purpose where the expenditure does not exceed the worth of the direct benefits enjoyed by the public body. *Turken v. Gordon*, No. CV-09-0042-PR, 2010 WL 246088, at *7 (Ariz. January 25, 2010).

Similarly, A.R.S. § 15-341(A)(14) requires that school districts expend gifts, grants, and devises “for the intended purpose for the monies.” Therefore, school districts have the authority

to use these funds to pay for subsistence for district staff at governing board-authorized district activities if that use is in accordance with the intended purpose of the monies. However, as with federal grants, school districts must still comply with applicable state law, including the Arizona Constitution's Gift Clause. Moreover, donors cannot attach conditions to donations that are contrary to law or that are inconsistent with the school districts' public trust obligations. Ariz. Att'y Gen. Op. I00-005. Finally, school districts should be cognizant of whether a gift, grant or devise presents a conflict of interest for staff pursuant to A.R.S. §§ 38-504(C) and 38-505.⁵

When interpreting statutes, the statute's language is the best indicator of legislative intent. *State v. Getz*, 189 Ariz. 561, 563, 944 P.2d 503, 505 (1997). Moreover, statutes must be construed in a manner that gives effect to an entire statutory scheme. *Backus v. State of Arizona*, 220 Ariz. 101, 104, ¶ 10, 203 P.3d 499, 502 (2009). Thus, when considered together with the travel and subsistence statute, the statutes requiring school districts to expend federal monies and gifts, grants, and devises in accordance with their intended purposes give school districts additional authority to provide food and beverages to staff.

School districts may also be able to include provisions for food, beverages, or refreshments as benefits in employment contracts, with some limitations. School district governing boards may contract with employees and fix their salaries and benefits for the

⁵ Whether a gift rises to the level of a conflict of interest will depend on the specific facts of each case. The conflict of interest statutes are as follows:

A.R.S. § 38-504(C) states that

[a] public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

A.R.S. § 38-505(A) states that

[n]o public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

succeeding year. A.R.S. § 15-502(A). Fringe benefits are employment benefits received in addition to an employee's net or take-home salary. Ariz. Att'y Gen. Op. I81-136. Fringe benefits have historically included such items as dental, medical, disability and life insurance, sick and annual leave, and housing and tuition allowances. Ariz. Att'y Gen. Op. I81-057; *see also* Ariz. Att'y Gen. Op. I01-004 (discussing school districts' practice of offering early retirement programs as fringe benefits under A.R.S. § 15-502(A)). School districts have some latitude in offering fringe benefits to employees as long as the districts confer the benefits in a manner that complies with the Arizona Constitution's Gift Clause. Ariz. Att'y Gen. Ops. I79-121; I76-178.

So long as . . . fringe benefits have been adopted by the school district governing board prior to the time that the school district's employees have entered into their contracts for the ensuing year, all of those fringe benefits are granted in consideration of those employees promising to perform and performing services for the school district for that year. That consideration is valuable and adequate and negates the existence of a gift.

Ariz. Att'y Gen. Op. I76-178. Therefore, to the extent that the provision of food, beverages, or refreshments can be considered a fringe benefit, school districts may include such terms in their employment contracts. School districts should, however, remain cognizant of the type of funds they intend to use for the provision of refreshments to ensure that they are complying with the legal requirements pertaining to such funds.

II. Providing Subsistence to Parents.

There is no express statutory scheme that addresses a means by which a school district may provide food, beverages, or refreshments to parents. Parents are not usually subject to the statutory provisions for travel and subsistence set forth in A.R.S. §§ 15-342(5), 38-621 and -622. These provisions pertain to school district employees and individuals with whom the district has contracted to perform services where the contract includes travel expenses. Ariz. Att'y Gen. Op.

66-23-L. However, where parents can be appropriately “designated [as] representatives of the superintendent or principal or as persons under contract to provide services to the district traveling for a ‘school purpose’ and reimbursed therefore from monies properly budgeted,” then the district may be able to pay such expenditures pursuant to A.R.S. § 15-342(5) without violating the Arizona Constitution’s Gift Clause. Ariz. Att’y Gen. Op. I79-077.⁶

Moreover, a school district may provide subsistence to parents if the funds utilized are from federal funds or a gift, grant, or donation intended for such a purpose so long as the district complies with the Gift Clause restrictions. Therefore, the school district must receive direct benefits from the parents’ participation in the school activities that exceed the expenditure. Finally, the school district must also abide by all of its statutory and public trust obligations with regard to any expenditure for refreshments. *See* Ariz. Att’y Gen. Op. I00-022 (stating that school district governing boards “may expend funds for a particular purpose if they have express or implied legislative authority to do so.”); Ariz. Att’y. Gen. Op. I00-005 (stating that a governing board “cannot make contractual promises to a private party in exchange for a donation of money or land that are contrary to statutory or constitutional requirements or are inconsistent with the district’s public trust obligations.”)

Conclusion

The District may provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized District activities after normal school hours or on weekends only and to the extent it is authorized to do so by the laws pertaining to travel and subsistence, gifts, grants (including federal grants), or devises. The District may also include terms regarding the

⁶ Attorney General Opinion I79-077 analyzed A.R.S. § 15-442(B)(5), which was the precursor to and substantially the same as A.R.S. § 15-342(5).

provision of food, beverages, or refreshments in employment contracts with some limitations.

Such expenditures must comply with the Gift Clause of the Arizona Constitution.

Terry Goddard
Attorney General