



## Common Booster Club Questions

Booster clubs provide parents and interested community members a means to support extracurricular activities beyond serving as mere spectators. Booster clubs hold fundraisers, organize banquets, and donate merchandise to the schools. This article discusses some common questions about booster clubs and their finances.

The rules applicable to a booster club depend on the nature of the club and its relationship with the district it supports. Booster clubs may obtain federal non-profit status as a charitable organization from the U.S. Internal Revenue Service.<sup>1</sup> If the booster club has filed a certificate of formation with the Texas Secretary of State as a non-profit corporation, state law also applies. The club must comply with federal and state laws and regulations in order to maintain its non-profit, tax exempt status. Some of these rules applicable to specific types of fundraising activities are discussed below.

Booster clubs supporting University Interscholastic League (UIL) activities are subject to the UIL Booster Club Guidelines and other related UIL rules. The UIL has designated each district's superintendent to be responsible for the district's UIL program and for developing a local structure under the UIL system that booster clubs must follow. For example, booster clubs must obtain the approval of the superintendent before initiating projects and raising funds. Booster clubs may not provide valuable consideration to athletes in violation of the amateur athlete rule or awards to any student in violation of the awards rule. A district may also have administrative regulations, procedures, or manuals applicable to booster club activities.

### 1. *What standards apply to the funds raised by a booster club?*

If a booster club supports a UIL activity, UIL guidelines and rules form an accountability structure for the booster club's fundraising efforts. Although the UIL rules require that the booster club solicit the superintendent's approval before beginning projects and spending funds, the booster club retains control over the initiation of the expenditures and the details of projects. The rules do not require that the funds be transferred to the district, so they typically remain in the custody of the booster club. Nonetheless, the superintendent may structure the local UIL rules to permit district control over the funds, at the superintendent's initiative or under the board's guidance. The district and booster club may also agree to transfer control of the funds to the district. Regardless of the manner by which the club gives funds to the district, UIL rules prohibit the club from specifying the purpose for which the district must use the funds.<sup>2</sup>

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<sup>1</sup> *UIL Booster Club Guidelines* (2011), available at [www.uiltexas.org/files/booster-guide.pdf](http://www.uiltexas.org/files/booster-guide.pdf).

<sup>2</sup> *UIL Booster Club Guidelines* (2011), available at [www.uiltexas.org/files/booster-guide.pdf](http://www.uiltexas.org/files/booster-guide.pdf).

If a booster club not subject to UIL rules opts to function as a non-profit corporation, the funds raised by the booster club, absent an agreement with the district, will remain private funds under the control of the club. This structure mirrors the foundations established by districts and by universities to support the interests of their respective schools.<sup>3</sup> Because the booster club is not subject to UIL restrictions, the club may specify a use for any money donated unless local policy or an agreement provide otherwise.<sup>4</sup> If the club does not specify a use, the district can use the funds for any legal purpose the school board deems proper.<sup>5</sup>

TASB recommended Policies GE(LOCAL) and GE(REGULATION) establish additional guidelines applicable to booster club funds. For example, GE(LOCAL) requires parent and other outside groups to obtain district approval prior to purchasing equipment for the schools. The policy also requires booster clubs to adhere to school board policies. The adoption of GE(LOCAL) alone by a district does not bring the funds raised by the booster clubs under the control of the board.

TASB's model GE(REGULATION), however, provides for more district control of booster clubs, possibly including control of the funds raised by the clubs. The regulation provides for local campus approval of booster clubs, outlines provisions for club fundraising in the schools, and establishes general guidelines for club conduct. If the campus principal opts only to rubberstamp the fundraisers and expenditures of a booster club, generally allowing the club to act independently, then the club would maintain control of the funds raised. That structure mirrors the structure set out in the UIL rules. If the principal takes a greater role in the development of the booster club fundraising plans and budget or generally places specific requirements on how the money must be raised and spent, then the funds can arguably be considered public funds under the control of the district and certain standards in state law and local policy may apply. For example, the funds could not be used for a purely private benefit due to the prohibition on gifts of public funds in the Texas Constitution. In addition, Texas procurement statutes may apply to purchases made by the district with the funds. The Education Code also requires school districts to adopt a policy governing the expenditure of "local funds from vending machines, rentals, gate receipts, or other local sources of revenue over which the district has direct control."<sup>6</sup> While these requirements may seem onerous, the advantage to district control is that school authorities can ensure that booster clubs responsibly raise, spend, and account for money in a manner that meets the district's needs.

However a district decides to structure its relationship with a booster club, there should be clear procedures in place that establish a set of checks and balances for handling booster club finances and dealing with the risks inherent in fundraising. This is particularly true when the booster club manages a substantial amount of cash.

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<sup>3</sup> For examples of such programs see Op. Tex. Att'y Gen. No. MW-373 (1981) and Tex. Att'y Gen. OR2002-2159.

<sup>4</sup> For examples of such programs see Op. Tex. Att'y Gen. No. MW-373 (1981) and Tex. Att'y Gen. OR2002-2159.

<sup>5</sup> Tex. Educ. Code § 11.156.

<sup>6</sup> Tex. Educ. Code § 44.908; TASB Policies CFD(LEGAL) and (LOCAL).

2. *Is it true that booster clubs can impact a district's compliance with Title IX?*

Yes. Title IX is the federal law that prohibits discrimination on the basis of gender in educational programs. Title IX applies to school districts because they receive federal funds.<sup>7</sup> One of the many factors considered in determining overall compliance with Title IX is the funding level of related programs.<sup>8</sup> Funds from a private source, such as a booster club, are considered in this analysis.<sup>9</sup>

Consider the following example: A district has a boys' baseball and girls' softball team. The teams have an equal number of participants and equivalent operational needs. The district provides each team with a \$4000 budget. Only the boys' baseball team has a corresponding booster club. The club raises an additional \$3000 for the boys' team and requests approval from the superintendent to use the funds to purchase new equipment and uniforms for the boys' baseball team. Although these funds are not spent by the district, the funds will be included in the funding analysis for Title IX purposes. The girls' team now faces a \$3000 funding disparity.

To avoid a Title IX violation, the district could spend more of the district's money on the girls' team, deny the booster club's purchasing request, or convince the club to divide the funds equally between the two teams. Districts should note, however, that spending on extracurricular programs is only one aspect of compliance with Title IX. If a district is anticipating a particularly large donation from a booster club (such as a generous gift to the football program), the district should seek advice from an attorney before accepting the gift or agreeing to use it in a manner that would primarily benefit the resources available to one sex.

3. *How can a booster club raise funds to support district activities?*

Booster clubs may raise money or obtain necessary equipment to support extracurricular activities in many ways, such as by collecting dues, soliciting donations or business sponsorships, selling tickets to carnivals or other events, and hosting auctions, bake sales, or car washes.

Charitable Raffles

A common question regarding booster clubs is whether they can raise money through charitable raffles. During a raffle, an organization awards a prize or multiple prizes to individuals selected by chance from a pool of those who have purchased, or otherwise promised a thing of value for, a ticket representing the chance to win.<sup>10</sup> Under the state Charitable Raffle Enabling Act, only a "qualified nonprofit organization" may conduct raffles to benefit a district or a specific school. A booster club must therefore meet the requirements of the Act to qualify to hold raffles.<sup>11</sup> The Texas Lottery Commission, the agency that monitors charitable raffles, is a good resource for information on qualifying under the Act and administration of raffles generally. The website for

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<sup>7</sup> 20 U.S.C. § 1681 (1972).

<sup>8</sup> 34 C.F.R. § 106.41(c). *See also Favia v. Indiana Univ. of Penn.*, 7 F.3d 332 (3d Cir. 1993).

<sup>9</sup> *See, e.g., Daniels v. Sch. Bd. of Brevard County, Fla.*, 995 F. Supp. 1394 (M.D. Fla. 1997).

<sup>10</sup> Tex. Occ. Code § 2002.002(6).

<sup>11</sup> Tex. Occ. Code §§ 2002.003, .051; Op. Tex. Att'y Gen. JM-1176 (1990).

the Office of the Texas Attorney General also contains resources for charities and nonprofits, including legal standards for charitable raffles.<sup>12</sup>

### Tax-Free Sales

A booster club that is organized as a non-profit may also hold tax-free sales. Like a public school district, a non-profit entity's tax-exempt status enables the entity to *purchase* items without paying a state sales tax. However, in order to *sell* items, a non-profit booster club (just like the district) would need to collect sales tax unless an exception applies. There are two ways that a district or booster club can hold a tax-free sale to raise money: (1) sell tax-exempt items such as meals and nonalcoholic beverages; or (2) hold a fundraising sale on up to two designated tax-free sales days. For more information on tax-free fundraising opportunities, see the Texas Comptroller of Public Accounts publication, "Exempt Organizations: Sales and Purchases," (November 2012), available at [http://comptroller.texas.gov/taxinfo/taxpubs/tx96\\_122.pdf](http://comptroller.texas.gov/taxinfo/taxpubs/tx96_122.pdf).

A booster club planning to sell food or beverages should consider that foods sold on campus during the school day (defined as the period from midnight before until 30 minutes after the official school day) must meet the federal Smart Snacks in Schools nutrition standards for competitive foods.<sup>13</sup> For tips on healthy fundraising, see the U.S. Department of Agriculture Website at <http://healthymeals.nal.usda.gov/healthyfundraising>.

A booster club can begin to qualify to take advantage of these fundraising opportunities by incorporating as a non-profit. For more information regarding incorporation, contact the Texas Secretary of State's office.

#### 4. *May a booster club hold a bingo fundraiser?*

Probably not. The Bingo Enabling Act (BEA) imposes numerous restrictions on bingo operations. The Texas Lottery Commission (TLC) is responsible for licensing and administrative enforcement of the BEA.<sup>14</sup> Only five types of entities may be licensed for bingo: certain religious societies; certain nonprofit organizations that support medical research or treatment programs; certain fraternal organizations; veterans' organizations; and volunteer fire departments (VFD).<sup>15</sup> The TLC issues one-year bingo operator licenses and temporary bingo licenses (for a one-time "bingo occasion").<sup>16</sup> Numerous restrictions exist on who can operate bingo, including the requirement that individuals who work on bingo operations be members of the organization that holds the license.<sup>17</sup> In short, school districts and campuses do not qualify to hold bingo fundraisers, and it is also unlikely that a booster club would be considered a qualified entity under the state law.

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<sup>12</sup> See, *The Att'y Gen. of Texas, Charities & Nonprofits: Charitable Raffles*, available at [www.texasattorneygeneral.gov/cpd/charities-nonprofits-charitable-raffles](http://www.texasattorneygeneral.gov/cpd/charities-nonprofits-charitable-raffles).

<sup>13</sup> 7 C.F.R. § 210.11.

<sup>14</sup> See Tex. Occ. Code ch. 2002; 16 Tex. Admin. Code ch. 402.

<sup>15</sup> Tex. Occ. Code § 2001.101.

<sup>16</sup> Tex. Occ. Code ch. 2001, subch. C.

<sup>17</sup> Tex. Occ. Code § 2001.411.

5. *Should a district employee or official serve as a president of the booster club?*

No law specifically prohibits a board member from serving as a booster club officer, but this is not a recommended practice. The booster club and district have overlapping areas of interest and responsibility; thus, serving on both entities is very likely to lead to conflicting loyalties. For example, the booster club may request that a district use a gift in a certain way. If the issue comes to the board of trustees to decide, which may be required by local policy, then at a minimum the conflicted board member should abstain from the vote.<sup>18</sup> Even if a dual role does not lead to an illegal conflict of interest, a board member should consider the potential for actual or perceived bias.

Similarly, an employee considering service as a booster club officer should be aware of the potential conflict of interest. TASB Model Policy DBD(LOCAL) requires an employee to notify his or her supervisor of any personal obligation or relationship that in any way creates a potential conflict of interest with the employee's job duties or the best interests of the district.

6. *Can a district offer special assistance to a booster club in the form of personnel, facilities, or other resources?*

The Texas Constitution generally prohibits the spending of public funds for a private benefit, known as a "gift of public funds."<sup>19</sup> A gift of public funds is not limited to financial expenditures; it could include other uses of district resources to benefit a private person or organization. In addition to the constitutional restriction, the Texas Education Code limits the use of school district local funds to purposes necessary in the conduct of the public schools determined by the board of trustees.<sup>20</sup> The constitution does not bar a governmental expenditure that "benefits a private interest if it is made for the direct accomplishment of a legitimate public purpose."<sup>21</sup> Based on this line of reasoning, the attorney general has opined that it may be constitutional for a school district to provide a private education foundation with office space and the use of other district property as long as:

- The arrangement serves a proper public educational purpose;
- The public will receive a return benefit by accomplishment of the district's purpose; and
- Adequate controls exist to ensure the public educational purpose is actually achieved.<sup>22</sup>

A district should only provide resources to a booster club when the board has determined that the above circumstances exist.

District vehicles are a special case. As a governmental entity, school districts enjoy immunity from most personal injury or negligence claims, whereas a booster club could be held liable as any other private entity. Injuries resulting from the use or operation of a motor vehicle are a major

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<sup>18</sup> See TASB Model Policy CDC(LOCAL).

<sup>19</sup> Tex. Const. art. III, §§51, 52(a).

<sup>20</sup> Tex. Educ. Code § 45.105(c).

<sup>21</sup> *Brazoria County v. Perry*, 537 S.W.2d 89, 91 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ).

<sup>22</sup> Op. Tex. Att'y Gen. No. DM-256 (1993).

exception to school districts' governmental immunity. As such, both the booster club and the district benefit from careful consideration and planning with respect to a booster club's request to use district vehicles.

In order to enrich the educational experience of students, it is crucial that a district and local booster clubs form an effective partnership. By reviewing district policies and entering into clear agreements with the clubs as necessary, a district can comply with legal requirements while enjoying the benefit of these support organizations.

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.*

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