

Attorneys at Law

John G. Moyer, Jr.

John E. Howland

Jerry L. Zimmerman

Frederick J. Hegenbart

Eric P. Nelson

Karen L. Long

John E. Priddy

Bryan K. Drummond

Kent "Bo" Rainey

Eric D. Wade

Matthew P. Cyran

Jerry A. Richardson

Cheryl A. Dixon

Adam S. Breipohl

Haley A. Drusen

M. Scott Major

C.H. Rosenstein

(1893-1990)

Henry L. Fist

(1893-1976)

David L. Fist

(1931-2008)

In this issue:

1

When Charity Begins at School: Avoiding Unconstitutional Gifts

3

Access to School Facilities by Service Animal Trainers

When Charity Begins at School: Avoiding Unconstitutional Gifts

by M. Scott Major

During times of crisis and increased need, Oklahoma educators naturally look for ways to help their students and communities, either by making contributions, volunteering their time, or fundraising for charitable organizations. But however noble the cause, generally, school districts and their employees are legally-constrained from making gifts of public funds and property, fundraising or volunteering during work time, and using school equipment, supplies and facilities to support charitable organizations.¹ Such expenditures are often unauthorized gifts of public funds.

Though the practice of supporting charitable organizations during work hours may have wide-spread moral support, Oklahoma law imposes very exacting limits on

the use of public funds. Article X, Section 14 of the Oklahoma Constitution provides that taxes may only be levied and collected by general laws and for public purposes, while Article X, Section 15 forbids the State from making a donation by gift to any "company, association, or corporation." A "gift" within the prohibitions of Section 15 is "a gratuitous transfer of the property of the state voluntarily and without any consideration."² These constitutional provisions are meant to "prohibit the Legislature from making direct appropriations, or gifts, to individuals from general considerations of charity or gratitude or because of some moral obligation resting upon the people of the state and such as a just and generous man might be willing to recognize in his dealings with

others less fortunate than himself.”³ The underlying philosophy of the above is that “public money will only be expended for public purposes”⁴ and cannot be gifted away to private individuals or organizations.

These prohibitions apply to public schools and clearly forbid outright gifts of public monies and property, but school districts are also generally prohibited from utilizing their personnel or property to benefit a private individual or organization during school hours.⁵ For example, if faculty members solicit donations for a charitable organization during contract time, their salaries are being paid from the general fund, and the cost of any school supplies depleted, equipment borrowed, or facilities used are paid for out of the building fund. Both funds are comprised of public monies, so any expenditure from these is itself an expenditure of public funds, and the constitutional prohibitions within Article X apply.

However, that is not to say that *all* charitable activities run afoul of Oklahoma’s Constitution. OKLA. STAT. tit. 70, § 5-129 vests exclusive authority in school boards to “exercise control over funds received or collected from student or other extracurricular activities” of the district.⁶

The Attorney General has opined that activity funds generated from student fund-raising activities are not public funds and retain their original character as private funds; as such, they are not subject to Article X’s prohibitions.⁷ Therefore, activity funds generated from student fund-raising activities may be used for making charitable or benevolent gifts or contributions provided that (1) at the beginning of each fiscal year, and as needed during each fiscal year,

the board approves the activity fund subaccount, the fundraising activity, and the purpose for which the money will be expended; (2) the funds are not used for any other purpose than for which the fund was created; and (3) the distribution of those funds is by a check, countersigned by the activity fund custodian.⁸ Therefore, so long as these restrictions are adhered to, charitable gifts may be made from activity funds.

School districts must understand that not all “activity funds” may be used for a charitable purpose. In an opinion issued in 2003, the Attorney General concluded that the proceeds from vending concession contracts and school picture contracts are “public funds” that are subject to the limitations imposed by the Oklahoma Constitution even if such funds

The Attorney General has opined that activity funds generated from student fund-raising activities are not public funds and retain their original character as private funds

are deposited in an activity fund account.⁹ The Attorney General explained that it is the “source and nature” of the money received by a school district that controls whether such money is “public funds,” not the type of account into which the funds are deposited. The Attorney General stated that whether money received by a school district amounts to “public funds” is determined by whether the funds are generated by the use of school property.

The instinct to give and serve that Oklahoma educators share can still be channeled for charitable purposes, provided that all funds are expended in a manner consistent with Oklahoma law. *If you have any questions regarding the use of school funds, please contact your school district’s attorney.*

¹One notable exception is found in OKLA. STAT. tit. 12, §5-147, which allows schools sites to donate food to a nonprofit organization.

²*Hawks v. Bland*, 1932 OK 101, ¶ 22, 9 P.2d 720, 722

³1932 OK 101, ¶ 38, 9 P.2d 720, 723 (emphasis added)

⁴1997 OK AG 6, ¶ 10

⁵*Id.*, ¶¶ 13-15

⁶*Id.*, ¶ 2

⁷*Id.*, ¶¶ 12, 15

⁸*Id.*, ¶ 15

⁹2003 OK AG 21, ¶¶ 14-15

Access to School Facilities by Service Animal Trainers

by Adam S. Breipohl

Individuals who are in the process of training service dogs to do work or perform tasks to assist disabled individuals often seek to bring the dogs onto the property of a public school district as part of the dog’s training. For example, a trainer may bring a service dog in training to a public event held at school in order to acclimate the dog to working in crowded environments. These requests are often reasonable and easily accommodated, but in some cases, the nature of the access requested may prove disruptive to school operations or pose safety concerns. When faced with resistance, service animal trainers may claim that the district is required under state law to allow the animal onto its property because a school is a “public building.” Although Oklahoma law does mandate that schools grant access to service animals in training under certain limited circumstances, the claim that schools are categorically required to allow service animal trainers on school property is a gross overstatement. School districts should be aware of their rights and obligations in this area so that their employees have the necessary information to process such requests in accordance with applicable law.

As many educators are likely already aware, the Americans with Disabilities Act (the “ADA”) requires “places of public

accommodation" to be made accessible to disabled individuals accompanied by service animals. However, a service animal that is in the *process of being trained* to perform such work or tasks for a person with a disability, but is not actually performing such work or tasks at the time its handler seeks to bring the animal onto school property, does not qualify as a service animal under the ADA. Hence, school districts have no obligation to accommodate service animals in training as a matter of federal law.

However, a somewhat obscure Oklahoma statute provides that "a dog trainer from a recognized training center in the act of training guide, signal, or service dogs shall not be denied admittance to or refused access to" certain public places, including any "college dormitory and other educational facility . . . to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited within the State of Oklahoma." OKLA. STAT. tit. 7, § 19.1(B).

Seeking to increase their access to various facilities for training purposes, some service animal training organizations read this language as forbidding the exclusion service dog trainers from any educational

facility whatsoever, ignoring the language limiting the application of that rule to facilities which are customarily available to the general public. In actuality, when the statutory language is read in its proper context, it essentially provides that a service dog trainer should be allowed the same level of access to school property as a similarly situated member of the public not accompanied by an animal. For example, if an individual affiliated

with a recognized service dog training organization brought a service dog in training to a high school football game, that individual would be entitled to purchase a ticket to the game for the same price as other members of the public and access public areas of school property such the bleachers, concession stands, etc. during the game. However, that individual would not be entitled to roam the halls of a school building during a "back to school night" when parents of students are permitted to be on school grounds, but members of the general public are not.

School districts should ensure that employees who may need to respond to requests for access to school facilities by service dog trainers understand the true



extent of the legal requirements in this area in order to ensure that the district is able to balance its obligation to accommodate service dog trainers with its need to maintain an orderly and safe educational environment.

If districts have questions about compliance with applicable law regarding accommodation of service animals or service animal trainers, RFR is here to help. Your RFR attorney can guide you through crafting policies and practices that comply with applicable law.

Tulsa Office:
525 S. Main, Suite 700
Tulsa, Oklahoma 74103
Phone: 918.585.9211
Fax: 918.583.5617
Toll Free: 800.767.5291



Oklahoma City Office:
3030 NW Expressway
Suite 200
Oklahoma City, OK 73112
Phone: 405.521.0202

ROSENSTEIN FIST & RINGOLD
ATTORNEYS & COUNSELORS AT LAW

Chalkboard is a Rosenstein, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published monthly through the school year and is sent without charge to all education clients of Rosenstein, Fist & Ringold and all other persons who are interested in education law issues. We invite you to share *Chalkboard* with your friends and colleagues. We think you will find *Chalkboard* to be informative and helpful with the difficult task of operating our educational institutions.

Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

Please use the form on www.rfrlaw.com (located on the *Chalkboard* page) to add or change *Chalkboard* e-mail addresses.