

Employee Conflicts of Interest

A school district employee who sells goods or services to students on school property has conflicting interests between his or her role as a teacher versus that of a solicitor of compensation or benefits for personal gain. School district employees are prohibited by state law from receiving anything of personal value that results from selling, soliciting, or promoting the sale of any goods or services to public school students while on school property or at school-sponsored events. However, school boards often identify a variety of third-party sponsored activities or solicitations that are beneficial to students, such as book clubs or band trips.

In order for school boards to develop written policies governing the sale and promotion of goods and services on school district property, it is important to understand the statutory prohibition against employee solicitation or sale of such goods and services. This Legal Comment provides a discussion of the general prohibition against an employee's sale of goods and services to students at school.¹

State Law

State law provides the following:

- No school district employee

may receive for his or her personal benefit anything of value from any person other than his or her employing school district to sell, promote the sale of or act as an agent or solicitor for the sale of any goods or services to any public school pupil while on the property of his or her employing school district or at an activity of his or her employing school district.²

This general prohibition also applies to employees of the Cooperative Educational Service Agencies (CESAs), including not only solicitation for the sale of goods on the property or activity of their employing agency, but, also, while on the property or at an activity of any school district in the agency.³

Discussion

The law may be characterized as consisting of five elements for the purpose of analyzing prohibited employee activities. That is, a school district employee may not (1) receive anything of personal value, (2) from an individual or organization other than the school district itself, (3) for selling or promoting goods and/or services, (4) to school district students, (5) while on school district property

or at an activity sponsored by the school district. Each of these elements must be present in order for a violation of the statutory prohibition to occur.

The types of prohibited items that are of personal value to an employee include gifts, benefits, or compensation that is either in the form of money or some other form. For instance, a high school band director who recruits students while at school to take part in a trip to Pasadena to play in the Rose Bowl Parade and who then accepts free airfare and hotel accommodations directly from the Rose Bowl officials to support the cost of his or her participation is violating the statute. The fact that the band director is acting as a solicitor for the sale of the trip to the students and receives a personal benefit from the sales directly from the trip sponsors violates the law.

District-sponsored book clubs provide an example of how to avoid violating the law. District-sponsored book clubs often represent commercial relationships between the school district and the book vendor. A district policy that provides for all the incentives or "points" garnered by the sale of the books to go directly to the school and not to any individual teacher

avoids the prohibitions of the law while allowing teachers to encourage the involvement of the students in the book sales.

An employee, however, may receive a benefit from the sale of goods or services if the benefit is provided directly to the employee by the school district. To avoid entanglement with the legal prohibition, the school district should stand in the position of negotiating any and all benefits from third party vendors who wish to sell or promote goods or services at school to students. For instance, a school district may, first, negotiate payment of a voucher for a predetermined value from a third party vendor for promoting the participation of students on a band trip. Then, subsequently, the school district administration may recruit a teacher by providing him or her with the voucher payment as an incentive for promoting the trip to the students.

Caution is required when such arrangements are made. The teacher may not serve in the capacity as an agent or solicitor in the design or negotiation of the benefits that will accrue to the school district by entering into a relationship with a third party vendor. For instance, a teacher may not negotiate the terms of a voucher payment, which a vendor then provides directly to the school district that, in turn, gives it to the teacher for his or her participation in the promotion and sale of the product or service. If a teacher negotiates a benefit or compensation in such arrangements, he or she may not benefit from it directly or indirectly. The school district must be the agent who negotiates with the third party vendor and decides who will benefit from such arrangements.

A violation of the law requires that the sale or solicitation of goods or services be directed at the students in the school district. However, in the absence of a district policy to the contrary, it is lawful for an employee to receive personal compensation or benefits for selling goods on school property if the sale is directed at other school district employees, board members, or other representatives of the school district.

Penalties

In the event that section 118.12(2) is violated, the offending school district employee will be subject to a forfeiture of not more than \$200 for each offense. The school board president will have the responsibility of prosecuting an action for the recovery of the forfeiture⁴ and must do so in conjunction with the State of Wisconsin through the attorney general's office.

Other Considerations

Except for the prohibitions against employee sales described above, any person may sell or promote the sale of goods or services on school district or CESA property. However, state law provides that a school district may adopt written resolutions or policies that prohibit, restrict, or provide guidelines for the sale and promotion of goods and services on school district property.⁵ Without policies in place limiting sales and promotions on school property, all sales and promotions are generally authorized. Events, therefore, that are typically sponsored by the school district as part of its regular community or educational program could inadvertently result in a violation of the statute.

In developing a policy to permit, restrict, or prohibit sales

generally on school property, the school board should consider the following four topics.

First, determine the purpose for which sales will be permitted, e.g., for educational or instructional purposes, or the commercial sale of school products. Second, identify the type or kind of products or services that may be sold or promoted, or, alternatively, restricted or prohibited, e.g., the sale of instructional materials or supplies versus a prohibition against the sale of candy or promotions sponsored by cigarette companies.

Third, consider the individuals or type of groups or organizations that will be permitted to sell products on school property, e.g., parent organizations, non-profit and for-profit groups, and student groups. School boards should bear in mind the requirement that policies may not discriminate against selected groups, such that the policies must be view-point neutral and avoid singling out a particular group whose ideology, political views, or religious views may not be supported by individual board members. Fourth, consider the conditions under which the district will allow sales and promotions, e.g., time of day; sales targeting instructional versus extracurricular activities; and the nature of the promotional materials, e.g., written (flyers or posters), oral, vending machines, or e-mail solicitations.

Summary

School district employees must avoid obtaining any personal gain or benefit from activities involving public school students while on school district property or involved in school-related activities, unless the benefit is provided

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directly by the school district. School officials are encouraged to scrutinize any instances where employees solicit students on school property (or at school activities) for any promotion that results in the employee receiving anything of value from other than the school district.

Finally, school boards can avoid violations of the law and provide guidance for monitoring such activities by reviewing or developing written policies that govern the sale and promotion of goods and services at school. School board members should be mindful that the revision or development of these policies may need to be harmonized with other board policies, such as student fundraising activi-

ties, community use of facilities, advertising in the school, and the use of the school logo. ▀

References

- * This *Legal Comment* was written by Michael J. Julka and Joanne Harmon Curry of Lathrop & Clark LLP, WASB Legal Counsel.
1. For additional information on this topic, see *The Focus*, "Sales on School Property: To Permit, Restrict or Prohibit?" (WASB, April 1986).
 2. Wis. Stat. § 118.12(2)(a).
 3. *Id.* § 118.12(2)(b).
 4. *Id.* § 120.15(4).
 5. *Id.* § 118.12(1)(b).