

Additional Questions Frequently Asked by School Support Organizations (SSOs)

The purpose of the following questions and responses is to restate frequently asked questions received by SSOs and to assist them in addressing issues that arise in their daily operations. Responses are intended to provide guidelines with views coming from information IRS articles, School Support Organization Financial Accountability Act, Model Financial Policy as prepared by the TN Comptroller Office of the Treasury, previous state investigative cases, and various attorney articles and views or CMCSS policy and procedures for School Support Organizations. These views are not intended to represent legal advice, but serve only to provide some additional guidelines for SSOs. Adherence to the law remains solely with the responsibility of the individual school support organization (SSO) and the following answers cannot be used as a defense to any civil or criminal violations that may occur from noncompliance with the School Support Organization Financial Accountability Act.

1. Can a SSO reward players/students for their fundraising efforts with credits against their individual accounts (what they have to pay for a trip or for gear, etc.)?

Parent Booster USA: The IRS has found that the use of individual fundraising accounts frequently results in illegal private benefits and strongly encourages its members not to use individual fundraising accounts since they may result in fines and penalties from the IRS and/or loss of tax-exempt status. In 2007 and 2008, at least three booster clubs in Kentucky were assessed fines and penalties by the IRS for engaging in fundraising activities in which parents and students were given credit for volunteering and fundraising. In one of the letters to a booster club, Lois Lerner, Director of Exempt Organizations for the IRS, reportedly stated that any booster club that raises money to benefit an individual rather than the group is in violation of federal law and stands to lose its tax-exempt status. An individual fundraising account is any method by which a booster club credits an individual or family for all, or a portion, of the funds raised by the individual, family or organization.

Kentucky Department of Education Redbook FAQ: Why does the IRS have a rule that fundraising cannot be tracked by individual student? When fundraising proceeds are attributed to specific students and used to offset fees or costs incurred by those students based upon the amount sold or the amount of time worked, it represents income to the students/parents. It is considered private benefit or inurement to the individuals. Booster groups in Kentucky were audited by the IRS several years ago and were fined tens of thousands of dollars for unreported income, penalties, and interest as a result of noncompliance with the private benefit and inurement prohibition.

PTO Today: Article – “Tax Court Rules on Common Fundraising Practice” (A Virginia booster club was faulted for giving credit to families based on the amount they raise.) Fundraising credits are not charitable....the judge wrote that the club’s point system may well be a rational and wholesome way to raise money to benefit young athletes. However, he also wrote that the point system does not advance a tax-exempt purpose. To receive a 501(c)(3) federal tax exemption, an organization must exist to benefit a public good, not individual people.

IRS: To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.

Point to Ponder - The purpose of a SSO is to support a group, not individuals within a group.

2. **Statement by SSO – “There is no state law that dictates that any money fundraised by an SSO must be split evenly among the members even if they do not participate nor raise as much money.”**

David W. Huss, Attorney-at-Law, Certified Public Accountant, Technical Advisory Service Newsletter dated 05/15/2016. “TCA 49-2-608 addresses prohibited actions of school support organizations. In subsection (3), it is provided that school support organizations may not “Use school support organization funds for a purpose other than purposes related to the goals and objectives of the school support organization that relate to supporting a school district, school, school club or school academic, arts, athletic or social activity;”. This statute (state law) provides that school support organizations may only expend funds that support a school district, school, school club, etc. In my opinion, if the General Assembly intended for school support organizations to raise funds for individuals, the General Assembly would have specifically stated such in state law. The General Assembly did not.

It would appear that the Comptroller’s Office agrees with this interpretation. In a PowerPoint presentation prepared by personnel of that office, ..., it clearly states, “it would appear that credits to individual accounts are not allowed under the law other than those credits which are applied to all students who participate in the club or activity.”

The PowerPoint further provides that “this office does not condone the use of ‘credits’ given to individual students. It appears that the SSOFAA does not provide for nor allow the disbursement of booster club funds for the benefit of individual students.”

In my opinion, if the Tennessee legislature had intended to provide authority for school support organizations to maintain individual student accounts, it would have expressly provided such authority. ...

In conclusion, I cannot locate any authority, state or federal, that would allow the maintenance of individual student accounts by a school or school support organization.”

3. **Are there any issues with a SSO having a debit card?**

David W. Huss, Attorney-at-Law, Certified Public Accountant, Technical Advisory Service Newsletter No. 18-03, September 24, 2017, “Where School Finance Meets School Law.”

“In my opinion, a school support organizations use of a debit card or credit card is not

contemplated within TCA §49-2-601, et seq., nor does the Model Financial Policy for School Support Organizations (Procedures Manual) contemplate the use of such.

TCA §49-2-610 provides, "The office of the comptroller of the treasury is authorized to adopt a model financial policy for school support organizations." To meet this obligation, the Comptroller's Office published the Model Financial Policy for School Support Organizations (Procedures Manual). TCA §49-2-604(e) provides, "A school support organization's officers shall ensure that school support organization funds are safeguarded and are spent only for purposes related to the goals and objectives of the organization. The organization shall adopt and maintain a written policy that specifies reasonable procedures for accounting, controlling and safeguarding any money, materials, property or securities collected or disbursed by it." In many cases, school support organizations have adopted the Model Financial Policy for School Support Organizations (Procedures Manual) as a means of complying with this statute; however, if the Model Financial Policy for School Support Organizations (Procedures Manual) (hereinafter "**Manual**") has not been specifically adopted, it is still authoritative. It "is intended to provide minimum internal controls to assist members and officers in improving accountability over school support organization funds. In addition, it provides recommendations for procedures that are considered a supplement to the required minimum procedures" (See **Manual**, page 1).

The **Manual** provides as required controls

8. All bills should be paid by *check*, never cash. Pre-signing blank *checks* should be prohibited.
9. For disbursements, prenumbered bank *checks* should be used that require two signatures" (emphasis added, See **Manual**, page 2).

When it comes to the use of words, in audits released by the Comptroller's Office, should equates to must. Thus, there is no room within "required controls" for debit cards or credit cards, as such require no signatures.

In many audit reports, football coaches, band directors, etc., have used debit cards for personal benefit; thus, many school support organizations do possess debit/credit cards regardless of the Comptroller's required controls. In my opinion, if an organization is going to violate required controls of the Comptroller's Office and use a debit/credit card, the board of directors must have a very strict and limited use procedure. Without a written procedure, such as requiring two signatures prior to the use of a debit/credit card, such should not be used for any purpose.

It is also important to note that all board members owe the school support organization a duty of care. One element of this duty is to be familiar with the organization's activities and financial condition. Board members who violate this duty of care can be held personally liable to the school support organization for any harm the organization suffers. Allowing the use of debit/credit cards when such is not contemplated could violate the duty of care."

Note: The following questions have been addressed with an outside attorney in the past via email or phone conversations or issue addressed in an advisory newsletter. Responses have been extracted, shorten, or restated in part from conversations. The opinions and views expressed are given to provide guidance only.

4. Can the school provide a filing cabinet for a SSO to place old bank statements, old annual reports, etc.?

There is no known law that would prevent a school from providing a filing cabinet that will lock for a SSO to place their financial records and reports in. However, the SSO should maintain control over the records.

5. Can school personnel use a SSO debit card and make purchases on behalf of the SSO?

A debit card should only be accessed by SSO personnel. School personnel should not have access.

6. Can a SSO store blank checks or place collected funds in the school safe overnight until a bank deposit can be made?

Collections should be deposited in the bank in a timely manner. (See Model Financial Policy.) Any funds placed in the school's safe should be accessed only by SSO personnel. School personnel should not have access to SSO funds or blank checks. Therefore, if funds or blank checks are stored in the school's safe, the funds and/or checks should be inside another locked box/bag for which only appropriate SSO officers have access to the key.

7. Can a SSO charge students/players a fee to attend camps?

When it comes to charging students a fee, only the Board of Education has the authority to do so.

SSOs can hold a camp(s) as a fundraiser and charge the **teams** a fee to participate; charging individual students/players, unless it is an individual camp, seems to be stretching the criteria for fees, especially when other items are involved in the calculation of fees to attend. If the only team invited to participate is the school team that the SSO supports, then issues could also arise with the appearance of charging fees attempting to be disguised.

If an SSO stated upfront, the charge to attend camp is \$100 and no one was required to attend, it is just another fundraiser and individuals could pay to attend. It is when the SSO tries to disguise what they are doing, such as calling a fee a "donation: that could cause issues.

8. Can a SSO donate funds to another SSO or outside organization?

In the attorney's opinion, a school support organization can only expend funds to support the academic, arts, athletic, and/or social program for which the organization was created to support. Therefore, a donation by one school support organization to another school support organization would be a violation of the *School Support Organization Financial Accountability Act*.

TCA 49-2-603(5) defines school support organization funds as "all money, materials, property or securities raised by a school support organization or any organization that represents itself to students, parents or members of the general public to be a school support organization..." Therefore, even "unsolicited" donations received by a school support organization are considered school support organization funds and must be treated as such.

9. Can a booster club give gift cards to players as an incentive to make good grades?

No. Giving cash or cash equivalent incentives to high school student athletes is against the TSSAA amateur rule and could cause the student to become ineligible to play in the sport for 12 months. See below excerpt from the TSSAA Handbook. (Note: It is of utmost importance that a booster club never give an athlete anything of value without first consulting with the school athletic director.)

TSSAA Handbook

Award Rule:

Section 19. A student may accept a medal, trophy, state championship ring, high school letter, sweater, jacket, shirt, blazer or blanket but nothing else of commercial value from his/her school. (A sweater, jacket, shirt, blazer or blanket must carry the high school letter or other appropriate award emblem.) **Acceptance of forbidden awards will cause a student to become ineligible for 12 months in the sport in which the violation occurs.**

Section 20. **A member school that has any connection with the presentation of a forbidden award — such as assisting in the selection of the person to receive the award, permitting the award to be given at a school function, or holding the award for a student until he/she has graduated — shall be subject to suspension from tournament play in the involved sport(s) for one season.**

10. How many fundraisers can a SSO do each year?

There are no certain number of fundraisers for which a SSO is limited to. The criteria for being able to do a fundraiser is based on the SSO being in full compliance and the fundraiser being approved by all required parties. (There is a limit of 2 fundraisers for which neither fundraiser can exceed 30 days in duration for which a SSO can do and avoid having to pay sales tax on fundraiser items purchased for resale. Rarely does a SSO meet this criterion.)