

The following questions address specific examples of fundraisers involving students and/or school personnel. The answers presume that the SSO involved has been recognized by the local board of education and has received required approval for the fundraising activity.

16. Can an SSO organization use school facilities to conduct a fundraiser? If so, can such a fundraiser be held during the school day as defined by the Act?

The answer **depends** on local school board policy. The Act states that a group or organization may not use school facilities for raising money, materials, property, or securities until the local board of education has adopted a policy, including required minimum provisions set forth in the Act, concerning cooperative agreements, SSOs, and the use of school facilities for fundraising purposes. Therefore, local school board officials must decide whether the use of school facilities for fundraising purposes by SSOs or other outside groups or organizations will be allowed, then adopt appropriate policy.

17. Would an SSO be allowed to retain collections from a school dance held for students at the school (for instance, the Homecoming Dance), if the organization was responsible for set-up, collections, clean-up, etc.?

Yes. As long as the SSO "sponsors" the event and is solely responsible for the event, collecting and accounting for the money, safeguarding the funds and depositing the funds into the SSO account in a timely manner (for example, within 3 business days).

18. Can a kick-off assembly be held at the school during the school day to promote the start of an SSO resale fundraiser, such as a candy sale in which students will be participating?

Yes. As long as the SSO "sponsors" the event and is solely responsible for every aspect of the event.

19. Could the soccer coach participate in a car wash fundraiser sponsored by the soccer booster club to benefit the soccer team?

Yes. If the car wash fundraiser is "sponsored" by the SSO, the soccer coach could participate in washing cars. However, the soccer coach could not be responsible for supervising the event for the SSO, including any related financial activities.

According to the Act, the soccer coach would be considered a "school representative" in relation to the soccer team and its booster club. The Act prohibits a school representative from acting as treasurer or bookkeeper of an SSO, or from being a signatory on checks. The Act does not prohibit a school representative from taking part in a related SSO fundraiser, so long as the school representative is not responsible for collecting, counting, or depositing the funds raised.

20. Could the band director (a school employee) sell fruit or other items in a fundraiser sponsored by the band booster organization and turn his/her related collections over to the band booster treasurer for that event?

Yes. The band director could personally sell fruit or other items in a fundraiser sponsored by the band booster club.

According to the Act, the band director would be considered a "school representative" in relation to the band booster club, and therefore, could not act as bookkeeper or treasurer, or be a signatory on the bank account. The Act does not prohibit the band director from individual participation in a resale fundraiser conducted by an SSO as long as the director is not responsible for supervising the event, including the financial activities.

21. Can an SSO sell t-shirts to students at school and keep the money?

Yes. If SSO personnel are responsible for all aspects of the fundraiser, then money received from sales of the t-shirts, including shirts sold to students, would generally be considered SSO money.

If the t-shirts are sold in a bookstore located at the school that is run/operated by the SSO/booster club, money received from the sales would be considered SSO/booster club funds as long as the principal grants the SSO/booster club permission to operate the bookstore. The Act (as amended in 2008) allows the local board and principal to enter into an agreement with an SSO to run a bookstore located on school property as long as 100% of the profits are used for support of the school and the SSO complies with the *Tennessee Internal School Uniform Accounting Policy Manual* when operating the bookstore.

If the bookstore is not operated and run by the SSO, then a t-shirt sale by the booster club cannot be done from the school bookstore and appropriate measures must be taken to maintain adequate separation between the school and its involvement with the t-shirt sales and the SSO's involvement as the "sponsor" of the fundraiser.

22. Can an SSO organization hold a steak dinner or auction on school grounds at night with students selling tickets, and with SSO personnel and students working at the event, and the proceeds be considered SSO funds?

Yes. Assuming authorizing local school board policy exists, if SSO personnel are responsible for supervising the planning and operation of the event, including related financial activities, then proceeds from such an event would generally be considered SSO funds.

23. Can a walk-a-thon, fun run, or other like event be held during the school day on school property and proceeds from pledges obtained by students/school employees participating in the event be retained by an SSO?

Yes. As long as the local board allows such a fundraising activity, an SSO can "sponsor" such an event and the proceeds of that fundraiser will belong to the SSO/booster club.

The following questions address individual accounts (for example for an athlete) within fundraisers as well as considerations related to coaches pay. The answers presume that the SSO involved has been recognized by the local board of education and has received required approval for the fundraising activity. The views expressed within the examples are not intended to be legal advice but serve only to provide additional guidelines for SSOs (Also see the Forward and Disclaimer) based on our experience.

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

No.

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.

25. 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. Bowling, golf and tennis students will abide by USBC, USGA, and USTA regulations in accepting awards.

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.

**The TSSAA Handbook is updated annually. The above excerpt was copied from the 2019-2020 edition. The reader is advised to consult the latest edition of the Handbook before taking any action.*

26. Can an SSO pay salary supplements to coaches directly?

It depends:

No. Payments for salary supplements must not be made directly to the coaches, assistant coaches, or other employees (e.g. teachers, principals) of the Board of Education. Salary supplements for Board employees must be paid through the Board of Education. The SSO must make donations to the Board for this purpose rather than paying Board employees directly.

Maybe. However, we are not aware of law or regulation that would prohibit non-school employees from receiving a salary payment directly from an SSO. The SSO must keep in mind IRS regulations and the requirements of TSSAA when applicable. Any such payment must not be discriminatory in nature.

The SSO must not make salary supplement payments of any kind unless the Board of Education has approved fund raising for that purpose. The Board of Education and the SSO need to be fully aware of the possibility of legal liabilities arising from interactions with students related to school activities and events.

In addition, the Board of Education and the SSO need to be fully aware of the possibility of legal liabilities arising from any and all discriminatory practices.

27. Can an SSO recruit student athletes?

No. This is not a proper function for an SSO. Recruiting, whether directly or indirectly appears to be in violation of TSSAA rules even if a school board or school official authorized fund raising for this purpose.

28. May an SSO charge and collect fees for school-sponsored activities?

No. SSOs must not charge fees to students to participate in school-sponsored activities or events. *Tennessee Code Annotated* 49-2-603(6)(f) defines fees charged to students for school sponsored academic, art, athletic or social events as student activity funds. As such, they must be accounted for by the school and deposited in the school bank account. Likewise, state law makes no provisions for SSOs to charge fees to students or their parents for participation in school-sponsored activities or events.

29. May an SSO require donations or participation in fundraisers as a fundraising method for students to participate in school sponsored activities?

No. Required or “suggested minimum” financial participation of students or their parents, whether through donations or required fundraising, will be interpreted as charging fees, and, as noted in 25 above, SSOs must not charge fees to students to participate in school sponsored activities or events. Likewise, state law makes no provision for SSOs to charge fees to students or their parents for participation in a school-sponsored activities or events.
