

Fraud Prevention Alert— Protecting Public Money

WHY ARE WE ISSUING THIS ALERT?

Our Office has recently issued several reports on instances of criminal activity in which public money has been misused by government employees, resulting in their indictment on felony charges. In addition, the Attorney General's Office is currently investigating a number of school districts that may have exceeded their express and implied authority by creating and operating foundations or nonprofit corporations, thereby misusing district money, supplies, equipment, and personnel.

This alert outlines how governing bodies can help protect public monies by exercising appropriate oversight. Specifically, public officials should ensure that they do not:

- Violate the public monies gift clause of the Arizona Constitution;
- Incur costs involving private organizations that exceed the public benefit; and
- Commingle public monies with private monies.

Putting effective controls in place can help ensure compliance with state laws and help prevent fraud, waste, and abuse.



2013

Use of public monies is legally restricted

Public officials with oversight authority have a responsibility to prudently manage money entrusted to them and ensure that sufficient internal controls are designed and implemented to protect those monies. In particular, officials should ensure public money is not given or loaned to private entities or persons in violation of legal restrictions as outlined in this alert. Specifically:

Constitution of the State of Arizona, Arizona Revised Statutes (A.R.S.) Const. Art. IX, §7—Prohibits gifts of public monies, including donations or loans of public money to private individuals or organizations.¹

A.R.S. §35-301—Asserts, in part, that a public officer who is responsible for receiving, safekeeping, or disbursing public money is guilty of a class 4 felony if he uses the money for his own or another's use without authority of the law or if he deposits it in a bank except for safekeeping purposes. See A.R.S. §35-301 for a complete list of violations.

Attorney General Opinion I10-003—Directs that the expenditure of public monies must be for a public purpose in which the expenditure does not exceed the worth of the direct benefits enjoyed by the public body.

Appropriate oversight and controls help protect public monies

Governing bodies should exercise their fiduciary responsibility to help protect public monies by establishing and enforcing policies that incorporate fundamental controls, such as:

- Stipulating that public monies will not be misused and will only be expended within their express and implied authority for public purposes in which the expenditure does not exceed the worth of the direct public benefits.

For instance, our Office reported in March 2013 that employees of two different Arizona school districts had misused more than \$45,000 of public money for themselves and for others, including paying for personal purchases and a superintendent's retirement party with alcoholic beverages.² They were each indicted by a State Grand Jury on felony counts related to theft, misuse of public monies, and fraudulent schemes.

¹ Public money as defined in A.R.S. §35-302 includes bonds and other evidences of indebtedness and money belonging to, received by, or held by state, county, district, city, or town officers in their official capacity.

² Glendale Elementary School District No. 40, March 2013, and Paradise Valley Unified School District No. 69, March 2013.

- Ensuring public monies are not improperly given, donated, or loaned to private individuals or organizations. Further, public monies cannot be commingled with private monies.

There have been numerous instances in which public entities have unlawfully given or loaned public monies to private organizations. For example:

- Our Office reported, as early as 2006, that three Arizona governmental entities had improperly paid for, or loaned money to, various nonprofit corporations for their payroll expenses.³ These unlawful payments totaled more than \$3 million.
 - The Attorney General's Office advised an Arizona school district in May 2013, that at least \$35,000 was expended in violation of the district's express and implied authority and did not support the district's legal purpose of educating Arizona youth. In fact, this school district improperly spent more than \$10,000 on collegiate scholarships and other unallowable items and gave nearly \$25,000 to a private, nonprofit corporation that manages and invests charitable donations and endowments.
- Prohibiting public officials and employees from using public resources to benefit private business operations. Absent express statutory authority, political subdivisions have no legal right to create, operate, or administer private entities such as foundations, booster clubs, or parent groups.

In 2013, the Attorney General's Office also advised more than one Arizona school district that they had acted without statutory authority when creating and operating an education foundation, thereby misusing district supplies, equipment, and personnel to administer the foundation's finances and assist with foundation fundraisers.

- Restricting use of the public entity's employer (taxpayer) identification number (EIN) to only those bank accounts authorized and allowable under Arizona Revised Statutes. Private entities, such as booster clubs, parent groups, and foundations, should use their own EIN when establishing bank accounts. Public entities should work to recover any public money held in unauthorized accounts, seek removal of their EIN from these accounts, and request the bank to refrain from opening any accounts using their EIN without written evidence of the governing authority's approval.

In August 2011, our Office issued guidance on this matter in response to the question of whether school districts should allow their EIN to be used by certain private entities. This guidance is available on our Web site.

³ Maricopa County Community College District, April 2009, Maricopa Regional School District No. 509, September 2007, and Santa Cruz County, March 2006.