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Education News
Winter 2009

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mbm-law.net
(412) 242-4400

TAX EXEMPT STATUS – THE TIME HAS COME FOR BOOSTER GROUPS

In times of shrinking resources, booster groups are exploring grants and private donations to assist with funding student activities and athletic programs. To qualify for many grants and to attract private donations, booster groups must obtain tax exempt status. To do so, the booster groups in your District may approach the Board to request that the District create a central organization for all District booster organizations in order for them to obtain a group tax exemption from the IRS.

Before considering such a request, first determine the current relationship between the booster groups and your District. Booster groups are not comprised of District students, but rather, adults, parents and/or community members. These groups may raise funds and donate these funds to the District or purchase items with their funds for donation to the District. They are not legally considered a part of the District. Many of the booster groups have not applied for or received non-profit status and do not have their own tax identification number. Therefore, the IRS may not recognize them as official entities.

With the above in mind, the IRS guidelines require a central organization and its subordinates to have a defined relationship. The subordinates must be subject to the central organization's general supervision or control. This relationship does not exist between most School Districts and booster organizations. School Districts and booster organizations do not have similar structures, purposes or activities. In contrast, a typical example provided by the IRS is that of a national fraternal organization which serves as the central organization for the several state and hundreds of local chapters of the fraternal organization (i.e., Knights of Columbus, Rotary Clubs, Lions Clubs, etc.).

Although the District could create a separate 501(C)(3) organization to serve as the central organization, the preferred course is for the separate booster groups to join together to create the central organization without District involvement. This maintains the separation and independence of the booster organizations from the District. By joining together to create the central organization, the booster groups would realize the same savings in pursuing the group tax exemption. Since the District is not involved, it would not be subject to the IRS filing requirements for a 501(C)(3) organization. Failure to electronically submit the required tax return for three consecutive years will result in the revocation of the organization's tax exempt status. If the booster groups are concerned about these responsibilities, another alternative is to become affiliated with either a state or national booster organization which already has IRS recognition as a 501(C)(3) central organization. Again, this approach would result in the same benefit to the booster groups and maintain the independence of the organizations from the School District.

In conclusion, it is not recommended that School Districts serve as the central organization for subordinates consisting of booster groups. Although School Districts could facilitate and/or participate in the creation of a central organization to pursue a Section 501(C)(3) exemption for the booster groups, the preferable course of action is for the individual booster groups to join together to create a separate entity and thereby benefit from the group tax exemption. Alternatively, this could also be accomplished with the booster groups affiliating themselves with existing state or national organizations which already have Section 501(C)(3) status as a central organization for other booster groups.

SUBCONTRACTING – AN OPTION OF LAST RESORT

With the commencement of the calendar year, many Districts are facing contract negotiations with their non-professional staff. All negotiations must be conducted in good faith, with a sincere desire to reach a collective bargaining agreement. At times, despite all good faith efforts in negotiations, an impasse is reached. At that time, with today's economic limitations, subcontracting may be the only viable alternative. The decision to bargain over the issue of subcontracting must also be done in good faith.

When contemplating subcontracting work previously performed by a bargaining unit, the following steps must be followed:

1. Notify the Union in writing of the District's intent to subcontract.

2. The District should request proposals from prospective subcontractors. The bid specifications must also be given to the Union.

3. Provide the Union with copies of the subcontracting proposals received by the School District.

4. Meet and discuss subcontracting proposals.

5. The District must do a cost analysis of the savings of the lowest subcontracting proposal and provide such information to the Union.

6. Meet and discuss the cost savings of subcontracting. Permit the Union the opportunity to make a counteroffer.

7. If the Union declines to meet the cost savings of the lowest subcontracting proposal received by the District, the District must submit to the Union one or more bargaining proposals that would meet the subcontractor's savings.

8. If the Union still cannot or refuses to meet the cost savings of the lowest subcontracting proposal, the Union should be notified in writing that its proposal, if any, has been rejected, and that the parties have reached impasse. Efforts should be made to have the mediator confirm in writing that an impasse has been reached. The Union should also be notified in writing of the specific date and time that the Board of School Directors will consider and vote upon the issue of subcontracting.

Before taking the steps outlined above, it must be determined whether good faith bargaining has taken place. Making that determination involves a review of the bargaining unit history, the present status of the negotiations and what steps may have to be taken, if any, prior to starting the subcontracting process. This can be a complicated and difficult determination. If it is determined that good faith bargaining has occurred, the application of the above steps can also be difficult to navigate. Ultimately, if the Union is willing to provide equal services at the same or less cost than the outside vendor, the District would be obligated to enter into such a collective bargaining agreement with the Union. If the District subcontracts the services, it is still obligated to engage in impact bargaining with the Union, including such matters as severance packages or opportunities for its members to be employed with the subcontractor.

THE MORATORIUM HAS BEEN LIFTED ON MANDATE WAIVERS

In a recent decision, the Commonwealth Court has clarified that school districts may continue to apply for mandate waivers, notwithstanding any informal policy of the Pennsylvania Department of Education to delay or limit such waivers. In Muhlenberg School District v. Pennsylvania Department of Education, an unreported opinion filed on November 20, 2008, the Court granted a School District's request for declaratory relief and, in effect, gave the Muhlenberg School District a mandate waiver from the separate multi-prime contract requirement. The District had sought a mandate waiver for a 13 million dollar expansion and renovation of its middle school on the grounds that (1) the District could not complete the work within the required timeframe and within budget if required to enter into multiple prime contracts, (2) the District could save between $100,000 and $300,000 if permitted to have a single contractor and (3) because the work was going to take place while school was in session, a single contractor would be better able to coordinate efforts to minimize disruption to school activities.

The School Code states at § 1714-B that PDE has sixty (60) days to approve, disapprove or request modifications to a School District's request for a mandate waiver. PDE replied to Muhlenberg's request by sending a letter which denied the application, but provided as its reason for denial only the rationale that PDE had received a high volume of mandate waiver requests and was awaiting receipt of a task force report which would analyze data concerning the impact of mandate waivers on school operations. PDE's letter informed the District that no mandate waiver applications would be approved until the task force report was completed and reviewed. This statement was consistent with a general perception that prevailed throughout the latter half of 2008 that PDE was not acting on mandate waiver applications, and that the program had been informally shelved.

In appealing this matter to the Commonwealth Court, the District argued that PDE was not empowered to impose a moratorium on mandate waiver applications, and that the Department's failure to provide specific reasons for denying the application led to a deemed approval. The Commonwealth Court agreed on both counts. The Court specifically found that the authority granted in the School Code to establish a mandate waiver task force did not otherwise change or expand PDE's powers or responsibilities to address mandate waiver applications. The Court further found that PDE's duty to act on the merits of a mandate waiver application required it to provide specific rea-

sons for any denials, and that by refusing the Muhlenberg School District's application on the basis of a pending task force report rather than on any substantive grounds, it had effectively denied the District its statutory right to submit a revised application. The District's mandate waiver application was thereby deemed approved by the Court.

This decision is good news for any School District planning to make application for a mandate waiver. To the extent that your District may be considering submission of a mandate waiver application, you can proceed with the assurance that the Commonwealth Court has held that right to be preserved, notwithstanding any efforts by PDE to impose a moratorium on such applications.

NO RIGHT TO KNOW CELL PHONE NUMBERS

With the advent of the new Right-to-Know Law on January 1, 2009, the Pennsylvania Supreme Court issued its decision in Tribune Review Publishing Company v. Bodack in which it ruled that unredacted cell phone records, including phone numbers of incoming and outgoing calls, fall under the reputation, personal security and privacy exceptions under the former Right-to-Know Act. The ruling is somewhat muted by one of the thirty exceptions under the new Law which defines personal identification information to include "all or part of a person's social security number, driver's license number, personal financial information, home, cellular or personal telephone numbers [or] personal e-mail addresses." However, since another exception prevents disclosure of a record which risks the personal security of an individual, the Supreme Court's rationale regarding the privacy interest has ongoing relevance. The Supreme Court held that phone records are public documents subject to disclosure, regardless whether the public officials had repaid the bills because public funds had been expended to cover the costs. The Supreme Court then decided that the telephone numbers must be redacted from the bills prior to disclosure under the Right-to-Know Act. Although the new Right-to-Know law shifts the burden to the government to prove a document falls under an exception to disclosure, in recognizing the privacy exception, the Supreme Court determined that there is information whose disclosure "by their very nature" would prejudice a person's privacy, reputation or personal security. With phone numbers, the government is not required "to prove item by item that each person or entity who may be affected will potentially suffer a threat to privacy, reputation or personal security." However, caution should be exercised in relying upon this decision when processing requests under the new Right-to-Know law.

"BLIGHT" UPHELD IN ABSENCE OF BAD FAITH

Maiello, Brungo & Maiello, LLP is pleased to report that its participation on behalf of its School District client has resulted in a Pennsylvania Supreme Court decision which upheld the creation of a tax increment financing (TIF) district and the School District's participation in the TIF plan. In what potentially could be a landmark decision in the case of Mazur v. Trinity Area School District, et al., the Supreme Court agreed with the arguments raised by MB&M that the TIF district creation and the decision to participate in the TIF plan were not arbitrary, in bad faith, contrary to statutory procedures or in violation of constitutional safeguards. The TIF opponents had argued that the area had been deemed a "prime location for regional shopping and entertainment" which prevented it from being described as "blighted." The Supreme Court agreed with MB&M's arguments that "it is well established that bald assertions of bad faith are not sufficient" and that "the mere fact that the property in question here was designated as a prime location for shopping and entertainment cannot on its own establish … bad faith when it also characterized the property as blighted." This decision is especially helpful to School Districts who may be seeking ways to attract large economic development projects into their School Districts through tax incentive programs such as tax increment financing.

TO IDLE OR NOT TO IDLE – NO LONGER A QUESTION

The Pennsylvania Legislature recently approved restrictions on the length of time that diesel-powered vehicles, including school buses, may idle. Act 124 of 2008, adopted October 9, 2008 and effective February 6, 2009, states that a bus may not idle for more than five minutes in any hour unless one of several exceptions applies.

For Districts within Allegheny County, however, there have been anti-idling regulations in place since 2004. Under ACHD Regulations, school buses may not idle before, during or after any run for a period longer than five consecutive minutes unless exceptions apply. Thus, School Districts within Allegheny County must comply with two similar sets of restrictions.

A summary of the requirements and exceptions is as follows:

	PENNSYLVANIA ACT 124	ALLEGHENY COUNTY REGULATIONS
RESTRICTION:	Idling may not exceed five (5) minutes in any sixty (60) minute period, unless an exception applies.	Idling may not exceed five (5) consecutive minutes before, after or during any run, unless an exception applies . No parking of idling buses within one hundred (100) feet of school air intake systems, unless an exception applies.
EXCEPTIONS:	Idling restriction does not apply if bus is motionless because of traffic or at direction of law enforcement, for lining up to drop off or pick up students, or to run a heater or air conditioner to prevent a health emergency or where there are special needs students who require temperature control.	Same exceptions contained in the state law, plus an exception to operate a defroster or bus lift if the bus is used as an emergency vehicle.
PENALTIES:	Drivers or owners who violate the Act can be charged with a summary offense, fined $150 or more (with up to $300 court costs) and be sanctioned under the Air Pollution Control Act.	Violators receive a warning for first offense, a fine of $100 for a second offense and $500 for third and subsequent offenses, plus possible sanctions under the APCA.

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The Education Law Team:

Alfred C. Maiello	acm@mbm-law.net
Michael L. Brungo	mlb@mbm-law.net
David Raves	dr@mbm-law.net
Falco A. Muscante	fam@mbm-law.net
R. Russell Lucas Jr.	rrl@mbm-law.net
Donald A. Walsh Jr.	daw@mbm-law.net
Jennifer L. Cerce	jlc@mbm-law.net
Beth Fischman	bf@mbm-law.net

To speak with any of our attorneys, call (412) 242-4400 or email acm@mbm-law.net

MB&M Special Counsel Services

Challenging legal issues constantly confront School Districts. As an ongoing service to Western Pennsylvania School Districts, MB&M's Education News will feature recent developments in one of the many specialized areas of the law including:

- Special Education: The law of special education is constantly evolving. Our attorneys have the experience to apply the law's intricacies to the specific situations facing your District.
- Construction: Multi-million dollar construction projects require the legal experience to protect this major District investment. Our attorneys have both the legal experience and architectural background to protect your District's interests.
- Personnel & Employment: Our attorneys address personnel matters on a daily basis, including collective bargaining, grievance arbitration proceedings, teacher dismissal actions and discrimination claims.
- Tax Assessment Appeals: With County-wide re-assessments and new commercial and residential construction, our attorneys have a proven track record of protecting and maximizing the tax base of Districts.
- Delinquent Taxes: Our firm has developed a specialized program with respect to earned income and real estate taxes which significantly increases the revenue for Districts.

As special counsel in these areas and others, we interact with your Solicitor, Administration and Board with the goal of providing a positive resolution to issues which may be unfamiliar or burdensome to the District. For more information regarding any of these specialized areas of practice, please contact Alfred C. Maiello or Michael L. Brungo at 412.242.4400.

Maiello Brungo & Maiello, LLP

Attorneys At Law

One Churchill Park
3301 McCrady Road
Pittsburgh, PA 15235
mbm-law.net

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