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Boosters and capital projects: What could possibly go wrong?

July 5, 2018

Artificial turf, stadium improvements, new locker rooms — all have become casualties in today's highly politicized era of scarce resources. It's rare to see such facilities overtly represented in bond issues or permanent improvement levies, but boards of education know extracurricular and co-curricular activities complement what's happening in the classroom in countless ways.

Enter the support groups — or “boosters” for purposes of this article — who are eager to help make such improvements happen. Boosters are typically some of the district's most ardent supporters and mean well.

Nevertheless, before a board of education accepts their help or participation, it's important to understand the basic legal concepts inherent in such collaboration. It's also important to develop consensus among the board members about how the collaboration is going to work and how the board is going to manage risks.

Gifts, generally

RC 3313.36 authorizes the board to accept gifts. These may be an entire project or part of a project. For example, the boosters build a weight room, and the board buys the weightlifting equipment for it. Regardless, once gifted to the board, the project

becomes board property. A board may honor conditions associated with a gift, as long as those conditions do not divest it of management and control of its facilities. This includes compliance with Title IX; a board can't accept a gift of lights for the boys' baseball field while the girls' softball team has no board-owned field at all and is shuffled around to area parks. In this era of social media and crowdfunding, it's important to monitor use of the district's name and promises made regarding the gift (e.g. "And our college kids will be able to use the new weight room whenever they're home since we have the keys!").

Board policy

Having a permanent improvement gift policy in place at the onset will force board discussion of the hardest questions that invariably arise in this context:

- Does the gift fit within the board's overall capital plan?
- Are the boosters required to have funds in hand sufficient to complete the gift — not promises or pledges over time but immediately available cash?
- Will the board finish the project if booster funding runs short?
- Will the board accept a gift subject to a lien?
- Will the board assume any debt the boosters have incurred if the boosters default?
- Who's paying maintenance, operating or replacement expenses?
- Does the board have a limit on what it might contribute now or in the future?
- What would be the board's funding source?
- Will the boosters be permitted to start another gift project before a prior gift is completed?

Process

Hopefully, the board is familiar with the boosters and their leadership. It's either a district-recognized group at the board's organizational meeting or a subset of community members oriented around the proposed gift. If the boosters are simply gifting cash, the board accepts the cash according to the acceptable gift conditions and constructs the project itself according to the applicable statutory construction delivery models. If the boosters are constructing the project, the board will want to pass a resolution granting the boosters permission to enter school property - a "license" in real estate terms. The resolution should approve all of the following:

- Design plans, including obtaining permits and inspections
- Staffing, including hiring skilled trades as necessary
- Schedule or phasing

- Site impact and security, including securing materials and machinery
- Insurance coverage and plans for risk management, especially if it's a "barn-raising" approach
- Plans for communicating gift progress or changes in scope with the board
- Intent to fully transfer the project and related warranties to the board when finished

Naming or renaming rights

Most often, boards already have policies in place regarding naming or renaming rights. These should be consulted before a board agrees to fundraising efforts that place a name on a project, on signage related to a project, or on a commemorative plaque or brick. The policies may also need to be updated, as appropriate, to align with the project's educational setting. How would the board feel about "Smith's Marijuana Farm" on the stadium press box?

Federal tax considerations: Charitable contributions

Contributions to the district directly are considered charitable contributions for federal and state income tax purposes, since governmental entities are treated similarly to IRC 501(c)(3) organizations. Otherwise, in order for donations to the boosters to be tax deductible as charitable contributions, the boosters must obtain a private letter ruling from the Internal Revenue Service (Form 1023 or 1023-EZ).

Federal tax considerations: Tax-exempt debt

This subject can be an unhappy one arising in several ways. Be sure to consult the board's bond counsel if any of the following are applicable.

- Private use. First, does the district have outstanding tax-exempt debt relating to the facilities where the project will be constructed? If so, then the board should be careful about granting preferential rights to non-governmental users to use any portion of the facility, other than general public use. This includes leases and management contracts, unless structured appropriately. If such use is deemed "private use," that may affect the tax-exempt status of the board's outstanding debt. Naming rights may be considered private use, depending on whether the name is that of individuals or a family versus a business or business-related foundation. The IRS views the latter as advertising, even if the business is a nonprofit, such as a hospital.
- Pledges. If the board steps in to finance the project, it can't issue debt on a tax-exempt basis in an amount greater than needed. The IRS will take into account all pledges intended for the project, even if the pledges aren't fully paid yet, in determining the amount the board can issue tax-exempt. Accordingly, it's helpful to have any pledge form have a disclaimer tied to a

general purpose, such as “artificial turf and maintenance thereof,” rather than a specific, limited project. Payment of expenses isn’t counted toward the amount needed for the project. Finally, pledges used to pay debt charges on the board’s project-related debt after the project is placed in service are going to be considered private payment, thus private use.

Boosters have energy and resources that can help good things happen for students. Boards do, too, but beyond that, they have a duty to protect the district and manage and control its facilities. Planning and asking the hard questions up front are the first steps.

This article was originally printed in the June issue of the Ohio School Boards Association Journal magazine.