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Making Booster Groups Work For You

OSBA Capital Conference 2013

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Agenda

- ▶ **Booster Organizations**
 - **Booster Group Organization Structure**
 - Board of Education Policies
 - Written Agreements with Booster Organizations
 - **Booster Activities**
 - Individual Fundraising Accounts
 - **Acceptance of Benefits**
 - Ethical Considerations



Booster Group Organization Structure



Booster Group Organizational Structure

- ▶ Formal or Informal?
 - Formal Recognition
 - Recognized by a formal action taken by board of education.
 - School-sponsored organization
 - Agreement in writing with the Board and organization
 - Approval to use of school name, logo, mascot, etc. for fundraising activities.
 - Chaperones/Volunteers on any trips must be fingerprinted
 - Informal
 - Treated like any other community group.
 - Facility use forms.
 - Needs to be clear when looking at the group that it is not sponsored by the Board.
 - Events are not Board sponsored, all advertising needs to be clear group is not Board sponsored.
 - If informal need to consider the grey area: When does the booster group act with the Board's approval and when does it not?

Board Policy

- ▶ Board supervision of booster group activities
 - 1) Board's authority to manage the schools within its district includes the supervision and control of both curricular and extra-curricular activities.
 - Appropriate settings and activities for Booster functions.
 - Sale of alcohol on school premises?
 - Gambling to raise money?
 - Insurance concerns?
 - Protect school's good name and reputation.
 - Submission of goals and fund-raising plans for Board approval
 - Idea of how much money will come into District
 - Chance to approve or disapprove of certain fund-raising activities.

Board Policy continued...

2) Use and control of booster funds

- Board policy to review booster group books to ensure funds are maintained, documented and spent appropriately.
- Handling of cash
 - Identify who can handle cash.
 - Identify procedures for tracking the source of cash.
 - How much is collected?
 - Where does the money go?

Board Policy continued...

- 2) Use and control of booster funds, cont.
 - Implementation of proper accounting practices
 - How to value non-cash donations?
 - External audits?
 - Income statement, balance sheet, expenses, etc.
 - Non-commingling funds
 - Should be separate accounts for funds raised for the benefit of the school and funds for the use of the booster group.
 - Since school is beneficiary of funds, it has an interest that funds are properly accounted for.
 - Board-implemented administrative controls:
 - What member(s) of the group can cash checks or withdraw funds?
 - Who can authorize contracts for the purchase of goods and services?
 - Require booster group to adopt formal regulations and bylaws.

Board Policy continued...

▶ Insurance

- ▶ Board of education may purchase a policy of insurance to cover “school support entities”, against liability on account of damages or injury to person or property resulting from any act or omission of the organization.
- ▶ Policy must be purchased from insurance company licensed to do business in Ohio;
- ▶ Board must adopt resolution specifying:
 - ▶ the amount of insurance;
 - ▶ the necessity of the insurance;
 - ▶ include a statement of the estimated premium as quoted in writing by at least two insurance companies if more than one company offers such insurance for sale to the Board.
- ▶ Board must purchase the insurance from the lowest bidder.

Board Policy continued...

- ▶ Insurance, cont.
 - Board must require school support organization to reimburse Board for cost of insurance.
 - Except for findings of recovery in an audit report, a Board may indemnify, defend and hold harmless a school support entity against a civil lawsuit, and may provide for the defense of the school support entity in a criminal proceeding. Limitations:
 - Acting within scope of person's service to the Board;
 - Acting in the good faith belief that conduct was lawful and in the best interest of the school district;
 - Expense and obligations must not exceed amounts appropriated for such purposes by the Board.

Agreement for Board-Sponsored Groups

- ▶ Set forth the items that the Board requires of the Board-approved Booster organization in writing.
 - Statutory requirements
 - Board needs to receive copies of all filings with Ohio Secretary of State, Ohio Attorney General's Office, Ohio Department of Taxation and/or the U.S. Internal Revenue Service.
 - Reports
 - Annual tax reports
 - Annual audit reports

Attorney General Registration

- ▶ Ohio Attorney General now requires booster clubs who have gross receipts of \$25,000 or more to register annually.
- ▶ Registration includes:
 - Annual report including tax information
 - Submit copies of documents
 - Articles of incorporation
 - Bylaws
 - Constitution
 - IRS determination letter of tax-exempt status
 - Notification of any revocation of tax-exempt status from IRS
 - Notification of dissolution of organization
 - Pay annual fee (\$50–\$200 depending on the amount of assets held)

Agreement for Board– Sponsored Groups continued...

- ▶ Other items to consider including in agreement between Board and Booster organization:
 - Use of Board name, logo, mascot, etc.
 - Requirement to participate in annual training put on by Ohio Attorney General's office
 - Insurance coverage
 - Money handling procedures
 - How much oversight the District will have of the Booster organization
 - What, if any, involvement will District employees have in the Booster organization.



Booster Activities

Booster Activity on School Premises (approved and non-approved)

- ▶ Upon request and payment of a reasonable fee, board of education shall permit the use of school buildings and property under its control, when not in actual use for school purposes, to hold an educational, religious, civic, social, or recreational meeting and entertainments.
 - Restrictions
 - Must be nonexclusive and open to the public;
 - Must follow policy adopted by Board for use of such school facilities.
- ▶ Decision on whether to permit certain activity on school premises
 - Gambling?
 - Only games of chance are permitted by charitable organizations
 - Sale of alcohol?
 - F or F-2 permits can be obtained by organizations - including 501(c)(3)s and school districts
- ▶ Board can require organization to pay for any damages above ordinary wear and tear and actual expenses for janitor service, light, heat.
- ▶ Lease agreement:
 - Specify location, date, time and duration;
 - Specify intended use of premises
 - Requirement to comply with the applicable Ohio and Federal laws for the event.
 - Indemnify and hold harmless agreement;
 - Insurance coverage

Booster Activities

▶ Gambling fundraisers

- ▶ Unless permitted by statute, gambling for profit in Ohio is illegal. Ohio law divides gambling into either a “scheme of chance” or a “game of chance”.
 - ▶ “Scheme of chance” includes: slot machine, lottery, numbers game, pools or other scheme in which participant provides valuable consideration to win a prize. Does not include bingo.
 - ▶ “Game of chance” includes: poker, craps, roulette, or any other game in which participant gives valuable consideration in the hope of gain, the outcome of which is determined largely by chance. Does not include Bingo.
- ▶ An exception to the general rule is fund-raising gambling conducted by a charitable organization. To qualify for this exception, the charitable organization must meet the following requirements:
 - ▶ Receipt of a letter from the IRS determining it to be a 501(a) or 501(c)(3) tax-exempt organization. To determine whether a charitable organization has been recognized as “tax exempt”, visit <http://www.irs.gov/charities/page/0,,id=15053,00.html>.
 - ▶ The charitable organization sponsoring the event must have been in continual existence in Ohio for at least 2 years.

Booster Activities

- ▶ Additional restrictions on gambling fund-raisers conducted by charitable organization:
 - Game of chance cannot be conducted during or within 10 hours of any bingo game.
 - Gambling activities must be restricted to “games of chance” or “schemes of chance”. Fund raising activity cannot be a “skill based” activity. For example, cannot have a softball tournament where each team pays an entry fee and the winner collects a prize.
 - Craps and roulette are prohibited from charitable fund-raising activities.
 - “Games of chance” can only be conducted during “festivals” which do not exceed four days and not more than twice a year, or for festivals that last 5 consecutive days, not more than once per year.
 - “Games of chance” can only be held on property owned by the charitable organization or property leased to them by a governmental entity.
 - Charitable organizations must obtain a license from the office of the Attorney General to conduct a bingo game. Conducting an unlicensed Bingo game is a felony.
 - Individuals helping with the gambling fund-raiser cannot be paid, either directly or indirectly. This includes tips, or other forms of non-monetary compensation.
 - After prizes are paid out, all money must be given to the school or retained by the 501(c)(3) organization for use in charitable purposes.

Booster Activities

▶ Sale of Alcohol

- ▶ Non-profit entities operated for charitable, cultural, fraternal, or educational purposes may obtain a temporary “F-2” permit to sell beer or intoxicating liquor for special events.
 - ▶ Restrictions:
 - ▶ Sale by individual drink;
 - ▶ Event held on premises located in political subdivision;
 - ▶ Premises where event held must be clearly defined and sufficiently restricted to allow proper supervision by law enforcement;
 - ▶ F-2 permit effective for up to 48 hours;
 - ▶ Organization can only receive two F-2 permits within a single year.
- ▶ Permit “F” may be issued to an association of ten or more persons, a labor union, a charitable organization, or to an employer of ten or more persons sponsoring a function for the employer’s employees to sell beer.
 - ▶ Restrictions:
 - ▶ Permit good for up to five days;
 - ▶ No more than two such permits may be issued to the same applicant in any thirty-day period;
 - ▶ Special events include social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purpose.
 - ▶ Event must be not-for-profit.

Booster Activities

- ▶ Sale of alcohol
 - “F-2” or “F” permit will not be issued until applicant has notified the chief peace officer of the political subdivision of the date, place, time, and duration of the event.
 - Except for “F-2” permits, if the event is held within 500 feet of land containing a school, church, library, public playground or township park, then the applicant must notify the appropriate entity by certified mail or personal service that it is applying for an alcohol permit and that the entity has an opportunity for a hearing prior to the issuance of the permit.

Individual fundraising Accounts

- ▶ Some boosters want to have fundraisers where students participate and have an individual fundraising account (“IFA”)
 - Students receive credits towards fees to participate in sports/activities by selling items for fundraisers.

- ▶ IFAs are prohibited in charitable organizations (including 501(c)(3)s, boosters, and schools)

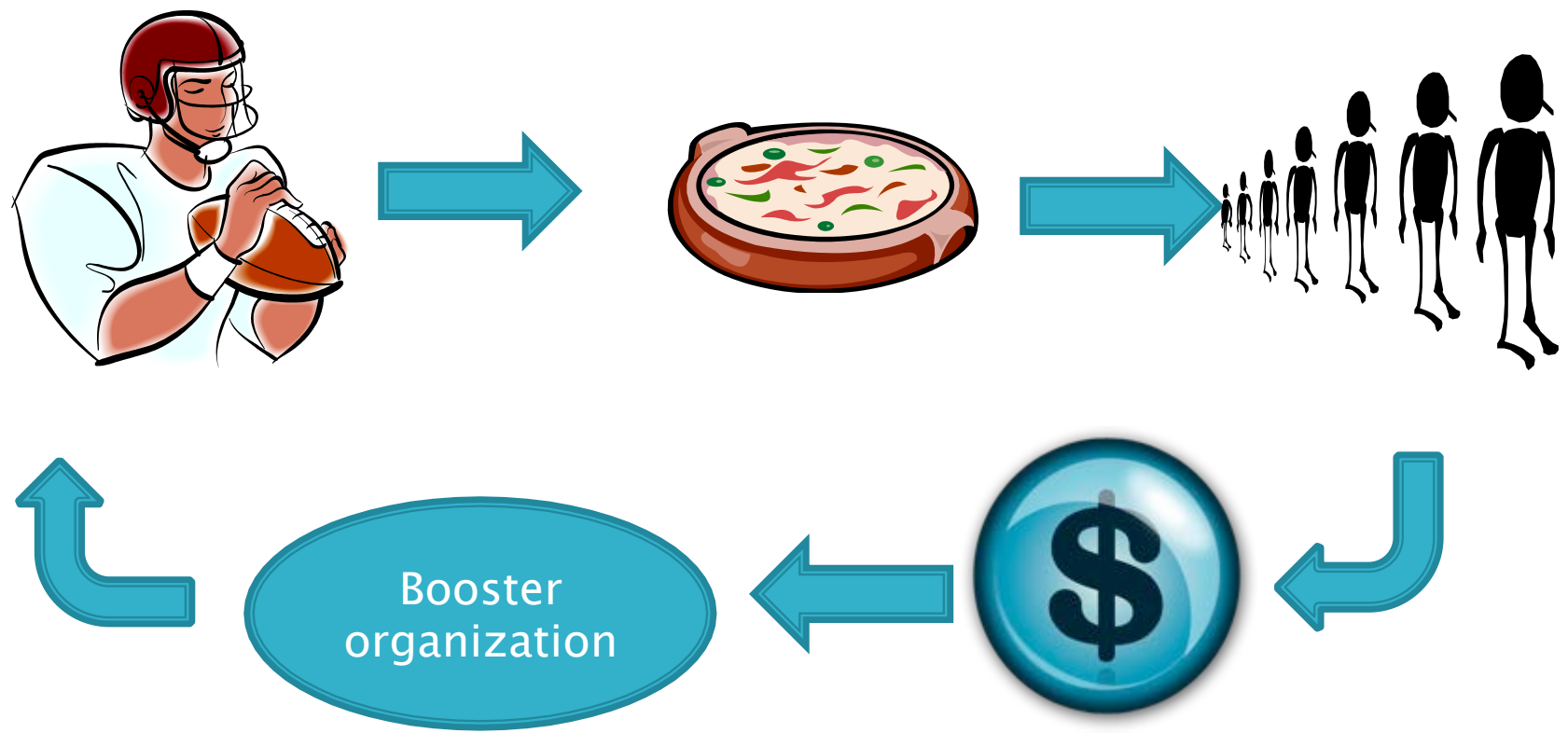
- ▶ The IRS sent out a memo in 2011 stating:
 - “If a booster club confers a benefit on a participant in return for their fundraising activities, such as crediting amounts raised by a participant toward that participant’s dues requirement, or by crediting amounts raised against the cost of a trip, the booster club is providing a private benefit to that participant. Consequently, such practices could result in the organization failing to be described in section 501(c)(3).”

IFAs Prohibited

- ▶ IFAs are prohibited in charitable organizations because charitable organizations are only permitted to be organized and operated exclusively for charitable or educational purposes, and all activities need to be in furtherance of those purposes.
- ▶ IFS which give benefits to private individuals in return and in direct relationship to their fundraising activities, therefore thwart the public, charitable purpose of the entire organization.



IFAs Prohibited continued...



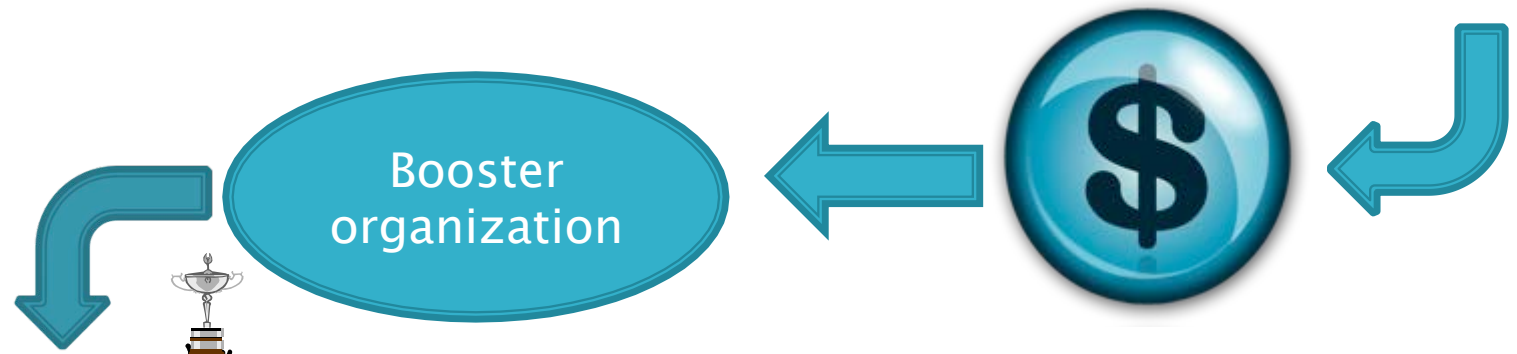
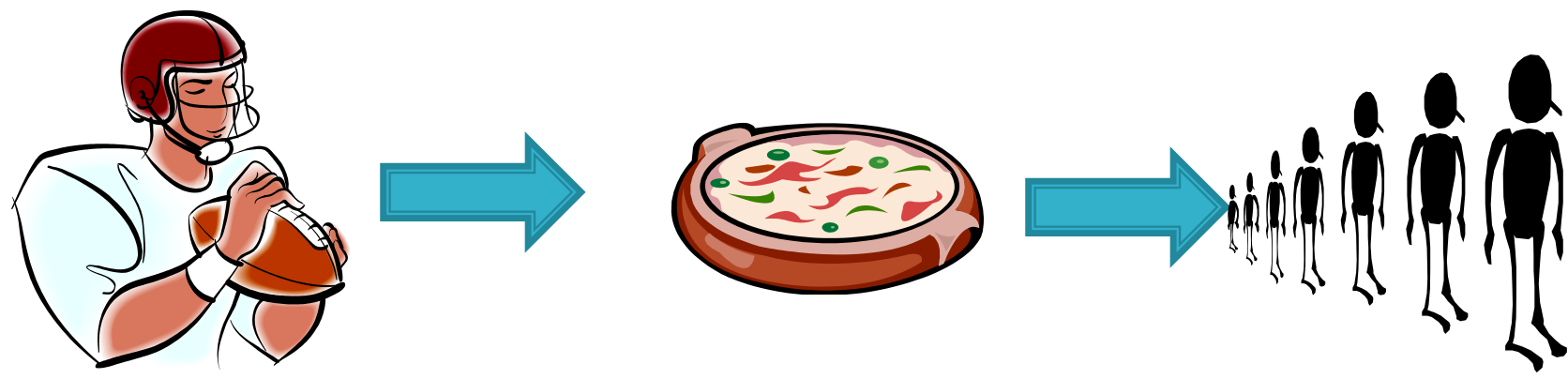
This practice is common AND impermissible

IFAs prohibited continued...

- ▶ Many forms to the prohibited actions:
 - Money directly paying down an individual student's pay-to-play fees.
 - Money directly paying down an individual student's trip fees for band trip.
 - Student and parent's volunteer hours given to work at a concession stand directly decrease that student's pay-to-play fees.



What should it look like?



The money should go to the entire group/team.

What should it look like?

- ▶ When the money goes to the entire group/ team then the benefit is not to the individual but to fulfill the purpose of the booster organization which is the educational or charitable purposes.
- ▶ If there are fundraising activities that the Board or booster wants to sponsor or there is a donation received, the funds must go to the benefit of the entire group, not just an individual.

What should it look like?

Continued...

- ▶ All fundraising should be voluntary on the part of the student/parents
 - Cannot be required to participate in the fundraising or have to pay a fee.
 - Can be required to participate in the fundraising as a condition of participation.
- ▶ Students should not be prohibited from participating or receiving a distribution of the total funds raised because they pay the non-participation fee, are excused from the fundraiser or do not raise the necessary amount for the particular fundraiser

Participation

- ▶ The problem with requiring students/parents to participate in fundraising arises when each parent/student must participate in the fundraising activities in direct proportion to the benefits they expect to receive from the fundraising activity.
 - For example, it would not be permissible if all band members are required to sell \$50.00 worth of candy bars or pay a fair-share fee for their lack of participation that is set at \$50.00 for the candy bar sale, because a direct benefit flows to the parents.
 - However, it could be permissible for all band members to be required to try to sell candy bars, and for those non-participating members, a fee is set for non-participation in each fundraising event at \$50.00.
- ▶ The last example is permissible because the students are not required to raise a certain amount through the fundraiser, and the non-participation fee is set for all events at one amount.
- ▶ Need to be careful to ensure that any non-participation fees are not simply charged in lieu of participating in all fundraising activities for the band members.
 - If the band members need to raise \$100 per person, and only two fundraisers are held with non-participation fees set at \$50.00 per fundraising event missed, then essentially, the student/parent will could pay \$100.00 at the beginning of the year not to participation in all fundraising activities.

Participation continued...

- ▶ If there is a non-participation fee, it should not equal what a student is expected to raise for a particular fundraiser.
 - Opt out of all fundraising – If there are non-participation fees charged to students for not participating in fundraising activities, the total fees charged should not equal the total amount of what a student is expected to raise for the year in fundraisers
- ▶ Students should not be prohibited from participating or receiving a distribution of the total funds raised because they pay the non-participation fee, are excused from the fundraiser or do not raise the necessary amount for the particular fundraiser.

Consequences

- ▶ When IFAs are used by tax-exempt charitable organizations, there can be negative consequences from the IRS that can result in the loss of tax-exempt status of the organization, in addition to large monetary fines and penalties being levied against the charitable organization.
- ▶ While school districts are not classified as 501(c)(3)s under federal regulations, IRS regulation 170(c)(1) provides the same limitations placed on charitable organizations will be applicable to school districts. Therefore, if a school district operates IFAs or accepts donations that confer a private benefit to individuals, the district may be penalized by the IRS in the same manner.



They have raised the money,
now what do we do with it?

–Acceptance of Benefits –



Benefits

- ▶ Benefits can look like:
 - Money
 - Construction projects
 - Band instruments
 - Uniforms
 - Bleachers

- ▶ Key is to have ownership pass to the Board upon the “gift” of the item.
 - DONATE!

Booster Supported Construction Projects

- ▶ If construction project funded 100% by school support organization, then board does not have to follow the procedures for soliciting bids and awarding contracts mandated by RC 3313.46.
- ▶ However, if Board is responsible for \$25,000 or more on the project, then must follow procedures mandated by RC 3313.46.
- ▶ Board oversight of booster-supported construction project:
 - Verify organization has sufficient funds to complete their fiscal obligations under the project;
 - Ensure that they obtained necessary permits, zoning approval, etc.;
 - Input and agreement over the design of the facility or building;
 - License agreement for access to school premises;
 - Liability insurance on the construction project;
 - waivers, releases, indemnification agreements



Considerations when Accepting Benefits

- ▶ Individual Benefit?
- ▶ Instructions on what do to with the money given?
 - Board may adopt resolution directing treasurer to pay proceeds of an unrestricted bequest, gift or endowment given to the district into the educational foundation fund.
- ▶ Title IX considerations?

Title IX Considerations

- ▶ Boards can run into problems under Title IX if they accept funds from booster groups where the group tries to control how the money or resources are used.
- ▶ Often, it is money generated by and earmarked for a specific sport that may lead to an imbalance between boys' and girls' sports. When inequity results from gifts given along gender lines, it is the responsibility of the district to correct this by allocating their own resources.



Acceptance of Funds from Boosters

- ▶ *Daniels v. School Bd. Of Brevard County*
 - ▶ Facts: Booster money was used to give the baseball team new bleachers, an announcer's booth, an electronic scoreboard, a batting cage, bathrooms, and lights for night games. The softball field had none of the above.
 - ▶ Decision: The court ordered the district to provide comparable facilities for the softball team.



Acceptance of Funds from Boosters

- ▶ Examples of how districts had to make up for Boosters:
 - Colorado district had to ask a large booster club to scale back its giving because of the large gaps created when the booster club raised about \$65,000 annually for the football program.
 - Another district had its football team win a state title. The team received an extravagant banquet from the boosters. Then, the girls' cross country team won the state title and the athletic director had to pull money from the general budget to provide an experience that was equitable.



Acceptance of Funds from Boosters

- ▶ Scenario
 - The men and women's basketball teams both need new uniforms, but the athletic budget does not allow for their replacement this year. Just prior to the start of the season, a booster organization offers to buy new uniforms for the men's basketball team, but refuses to donate to the general fund or give money to the women's team. How should the athletic director deal with this?



Acceptance of Funds from Boosters

- ▶ If a district concludes that an inequity exists, the problem must be remedied. Generally there are three choices for remedies:
 - ▶ Give greater amounts of funding to the gender that does not receive booster support;
 - ▶ Seek to control the booster budget and allocate to create equality; or
 - ▶ Reject donations.



Ethical Considerations with Benefits

- ▶ What is a booster group wants to give a gift to a coach?
 - Ohio Ethics Laws prohibit school employees (including those on supplemental contracts) from accepting, from anyone other than the Board of Education that employs them, monetary compensation for performing any duties of their employment.
 - What about a football coach that receives an invitation to go dinner with the booster organization and the uniform manufacturer?
 - What about a Spanish teacher who receives an offer from the language booster organization to go on the annual Spanish language trip to Spain for free – for her and her husband?



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Questions?

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