



BUSINESS & FACILITIES

News and Legal Developments in Business,
Contracts, Construction and Property

Should The District Or Its Auxiliary Organization Receive Private Monetary Donations?

Last month, billionaire MacKenzie Scott, announced another massive round of donations, totaling hundreds of millions of dollars, to colleges and universities that are not the usual beneficiaries of major philanthropy in higher education. Scott wrote in a blog post that her latest gifts totaled more than \$2.73 billion. She distributed the money to “high impact organizations in categories and communities that have been historically underfunded and overlooked.”¹

In light of gift giving in the news, this is a good time for community college districts to assess how to handle receipt of large monetary gifts from private donors. For some districts, this consideration will include whether to direct such gifts to its auxiliary organization. Districts may prefer that private donors direct donations through their auxiliary organization because the organization may have more flexibility than the district in terms of how the funds are spent. There are limited, but *significant*, activities in which a district’s auxiliary organization can engage that the district cannot.

As a public agency, a district cannot “make any gift or authorize the making of any gift, of any public money or thing of value to any individual...”² Except where specifically authorized by statute, this prohibition on gifts of public funds extends to scholarships or other fee waivers for individual students.³ The Education Code requires districts to charge enrollment fees.⁴ Without specific statutory authority allowing a district to waive these fees, it would be making a gift of public funds. Although there may be a waiver for low-income students subject to certain criteria,⁵ there is no general waiver allowing a district to divert general funds toward scholarships or fee waivers. On the other hand, as a distinct legal entity, an auxiliary organization generally may raise and distribute its funds to individuals in the form of a grant or scholarship without creating an unlawful gift of public funds.

State law prohibits community college districts from using district funds, services, supplies, or equipment to urge support or defeat of any ballot measure.⁶ However, auxiliary organizations

¹ See <https://mackenzie-scott.medium.com/seeding-by-ceding-ea6de642bf>.

² Section 6 of Article XVI of the California Constitution.

³ See Chancellor’s office Legal Opinion O 11-3 (March 11, 2011); Ed. Code, § 76300.

⁴ Ed. Code, § 76300.

⁵ *Ibid.*

⁶ Ed. Code, § 7054.

may engage in an “insubstantial” amount of such lobbying activity, as long as the activity is otherwise consistent with the organization’s exempt purpose.⁷

Finally, “public perception” may favor directing private funds to an auxiliary organization in lieu of the district. The public is less likely to scrutinize spending of a 501(c)(3) organization, like an auxiliary, whereas public agencies, like districts, favor more public scrutiny.

Regardless of the decision that the district makes regarding handling of private funding, the auxiliary organization must still adhere to its incorporating instruments and purpose when it expends those funds. For any questions regarding private donations to community college districts, please contact Liebert Cassidy Whitmore.

This article was written by, Associate [Monica M. Espejo](#) from the Sacramento office of Liebert Cassidy Whitmore. Monica is a member of the firm’s Business and Facilities practice group, which assists public agency clients in matters including construction, contracts, purchase agreements and real property. Monica can be reached at (916) 584-7021 or at mespejo@lcwlegal.com. For more information regarding the update above or about our firm please visit our website at <http://www.lcwlegal.com>, or contact one of our offices below.

To subscribe to this e-newsletter please visit: <https://www.lcwlegal.com/>

Liebert Cassidy Whitmore publishes the Business and Facilities Update as a service to our clients and other friends for informational purposes only. It is not intended to be used as a substitute for specific legal advice or opinions and the transmission of this information is not intended to create an attorney-client relationship between sender and receiver. You should not act upon this information without seeking professional counsel.

6033 W. Century Blvd.
5th Floor
Los Angeles, CA 90045
(310) 981-2000

135 Main Street
7th Floor
San Francisco, CA 94105
(415) 512-3000

5250 North Palm Ave.
Suite 310
Fresno, CA 93704
(559) 256-7800

401 West “A” Street,
Suite 1675
San Diego, CA 92101
(619) 481-5900

400 Capitol Mall
Suite 1260
Sacramento, CA 95814
(916) 584-7000

⁷ U.S.C. §§ 501(c)(3), 501(h)(2)(A); Treas. Reg. § 56.4911-2(d); Treas. Reg. 1.501(c)(3)-1(c)(3)(ii) provides that the term “legislation” includes action by any local governing body in a referendum, initiative, or similar procedure.