



STATE OF IDAHO

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ATTORNEY GENERAL OPINION NO. 86-13

TO: The Honorable Pete T. Cenarrusa
Secretary of State
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

Dear Secretary Cenarrusa:

QUESTION PRESENTED:

Does Idaho Constitution art. 12, § 4, prohibit a school district from creating or controlling by membership on the board of directors, a nonprofit corporation, the purpose of which is to accept and manage gifts to the public schools that qualify for income tax credits pursuant to Idaho Code § 63-3029A?

CONCLUSION:

School districts are constitutionally prohibited from creating or aiding any private non-profit corporation, and are not statutorily authorized to create public corporations. However, individuals acting in a private capacity may create a non-profit corporation for the purpose of soliciting and managing gifts exclusively in support of a public school system. Gifts to such a non-profit corporation would qualify for income tax credits provided by Idaho Code § 63-3029A.

ANALYSIS:

Idaho Constitution art. 12, § 4, provides in pertinent part:

No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association. . . .

School districts are municipal corporations within the meaning of this section. School District No. 8 v. Twin Falls Mutual Fire Insurance Co., 30 Idaho 400, 164 P. 1174 (1917). Therefore, a school district may not become a stockholder in, raise money for, make a donation to, or loan its credit in aid of any corporation or association. The section was found to prohibit membership by a school district in a non-profit mutual fire insurance company in School District No. 8 v. Twin Falls Mutual Fire Insurance Co. supra. Similarly, Idaho Const. art. 8, § 4, prohibits school districts from lending their credit directly or indirectly in aid of any individual, association or corporation.

Because of the constitutional prohibitions, a school district cannot create a private, non-profit corporation to administer donations to the schools. The above analysis does not prohibit school district trustees or other individuals acting as private citizens, from creating non-profit corporations to solicit and administer gifts to the public schools. Creation of such private non-profit corporations by individuals is authorized by Idaho Code §§ 30-301 through 30-332. The articles of incorporation should ideally contain healthy qualifying language disclaiming any control or involvement by the school district. This type of corporation would be similar in nature to university foundations which are private controlled non-profit corporations created to receive and administer gifts from the public on behalf of the universities.

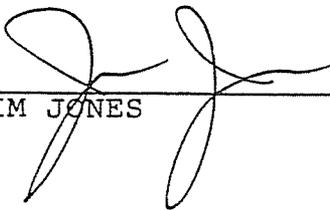
Alternatively, a school district can establish a separate trust fund or account within its existing financial structure, to receive, invest, and distribute donations to the public schools. Such an account or system does not appear to be contrary to the prohibitions found in art. 8, § 4, and art. 12, § 4. As was stated in Idaho Falls Consolidated Hospital v. Bingham County Board of County Commissioners, 102 Idaho 838 (1982), where a fund was established by the county to aid indigents, "[a fund] remaining within control of the municipality helps insure that private interests will not gain advantage at the expense of the taxpayer." 102 Idaho at 841.

By proceeding cautiously, the school districts or interested members of the public can use the mechanisms described above to create an effective means of receiving and administering donations to the public schools.

DATED this 2nd day of December, 1986.

ATTORNEY GENERAL
State of Idaho

JIM JONES



ANALYSIS BY:

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AUTHORITIES CONSIDERED

1. Idaho Constitution

Article 8, section 4
Article 12, section 4

2. Idaho Code

Idaho Code §§ 30-301--30-332
Idaho Code § 63-3029A

3. Idaho Cases

School District No. 8 v. Twin Falls County Mutual Fire
Insurance Co., 30 Idaho 400, 164 P. 174 (1917).

Idaho Falls Consolidated Hospital v. Bingham Co. Bd. of
County Commissioners, 102 Idaho 838, 642 P.2d 553 (1982).