

KDLA July2010 Trustee Tip of the Month Can Boards Award Bonuses or Gifts to Employees?

Recently, the State Auditor's Office has noted bonuses paid to staff as deficiencies in several library audits. The problem arises when the board of a special district (library district) gives a bonus (or other valuable "gift") to an employee. This gift may be in the form of additional money, property, or unearned benefits, such as extra leave time not specified in policy.

All funds of which a library district has control are public funds, regardless of the source. (KRS446.010). Because of this, the use of these funds is closely regulated.

The use of public funds for the purpose of making a gift or bonus is addressed in the Constitution of the Commonwealth. The Constitution states:

All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution, and every grant of a franchise, privilege or exemption shall remain subject to revocation, alteration or amendment.

This section has been construed by the Attorney General to mean that public funds or privileges can only be granted in consideration of public service and that tax money of a governmental entity may only be spent for public purposes. See OAG 84-161, at page two, OAG 79-509, at page two, and OAG 79-67, at page three.

The Office of the Attorney General has consistently taken the position that governmental appropriations must be for a "public purpose." Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all, or at least a substantial part of, the inhabitants or residents. Otherwise stated, the test of a public purpose should be whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public, as distinguished from a remote or theoretical benefit.

If the library district were to award a bonus to an employee, the library board would need to be prepared to defend the "gift" or "award" to an employee as expenditure for a "public purpose." This has been accomplished within the case of teacher bonuses because of legislative intent - the legislature clearly intended for the funds to be expended in this manner (OAG 00-2). No such legislative intent exists for utilizing library funds for this purpose.



While it appears conclusive that a library district may not award a “bonus” or “gift” to an employee, this is obviously an area where the board needs to proceed with extreme caution and should seek the advice of legal counsel if they are considering such an action.

Quick Tips:

- ◆ Library funds can only be used for public purposes.
- ◆ A good test to determine public purpose use may be to ask whether the public will directly benefit from the usage of the appropriation.
- ◆ All funds available to the Library are considered public funds, whether from collected taxes or any other source, and cannot be used for any other purpose except a public purpose.
- ◆ Any benefit not specified in policy could be considered a gift or bonus.

This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney.

For more information, contact:

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