

Can Arizona School Districts Provide Food to Employees?

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A school district may avoid providing food to employees given that the Attorney General Opinion I10-003 states school districts may not provide food to staff and community members when they are not on travel status. This would be considered a gift of public funds. However, a district may consider including occasional meals and snacks in the employee contract as a fringe benefit to allow for such items without violating the gift of public funds clause.

For many reasons, a district may want to provide food to their employee outside of the typical travel reimbursement process. During the 2021 legislative session, HB2210 which amended ARS 15-342 to include language that states “Subject to Article IX, Section 7, Constitution of Arizona, the laws pertaining to travel and substance, gifts, grants, including federal grants, or devises and policies adopted by the Department of Education, provide food and beverage at school district events, including official school functions and trainings.” This new legislation opened up a new can of worms in regards to providing food to employees.

Whether the district wants to provide lunch during training at the beginning of the year or for employee recognition, any expenditure of public funds must comply with the Arizona Constitution’s Gift Clause. In general, staff subsistence is allowed when staff members are away from their “designated post of duty.” A.R.S. § 38-621(A). The “designated post of duty” is “where one’s desk is situated and where primary employment duties are performed.” Ariz. Att’y Gen. Op. I79-152. Therefore, as a general rule, prior to this new legislation, when school district staff attend meetings or other activities at their designated post of duty, they are not entitled to

subsistence as defined by A.R.S. § 15-342(5). Ariz. Att’y Gen. Op. I90-077. Travel reimbursements were one of the few ways a district can provide food to employees.

Similarly, A.R.S. § 15-341(A)(14) requires that school districts expend gifts, grants, and devises “for the intended purpose for the monies.” Therefore, school districts have the authority to use these funds to pay for subsistence for district staff at governing board-authorized district activities if that use is in accordance with the intended purpose of the monies. However, as with federal grants, school districts must still comply with applicable state law, including the Arizona Constitution’s Gift Clause. Moreover, donors cannot attach conditions to donations that are contrary to law or that are inconsistent with the school districts’ public trust obligations. (Ariz. Att’y Gen. Op. I00-005) Finally, school districts should be cognizant of whether a gift, grant or devise presents a conflict of interest for staff pursuant to A.R.S. §§ 38-504(C) and 38-505.

Charging food service employees for meals is left to the discretion of the district. According to the Arizona Department of Education Child Nutrition Programs Guidance Manual, meals to food service employees may be provided at no charge and can be considered a fringe benefit attributable to the food service program. These meals must be listed in the food service AFR. If a district chooses to provide food as a fringe benefit, then fringe benefits must be adopted by the school district governing board prior to the time that the school district’s employees have entered into their contracts for the ensuing year. All of those fringe benefits are granted in consideration of those employees promising to perform and performing services for the school district for that year. That consideration is valuable and adequate and negates the existence of a gift. School districts should, however, remain cognizant of the type of funds they intend to use for the provision of refreshments to ensure that they are complying with the legal requirements pertaining to such funds.

In summary, with this new legislation, districts may provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized district activities only where and to the extent the district is authorized to do so by the laws pertaining to travel and subsistence, gifts, grants (including federal grants), or devises. The district may also include terms regarding the provision of food, beverages, or refreshments in employment contracts with some limitations. If the district has not already done so, this is a good opportunity to consider adopting a policy/regulation/practice of limitations of what can be provided. Providing examples of types of snacks and refreshments (i.e., bagels, coffee, cookies) and what funding sources can be used considering that certain grants still will not allow it and spending M&O funds may not be prudent if a district is looking at budget cuts. Individual districts should also consider an approval process for what is considered a district event and if the meeting must span a certain amount of time for refreshments to be offered. This policy should also consider if a cap on a per employee cost for the refreshments served. When it is all said and done, such expenditures must comply with the Gift Clause of the Arizona Constitution.

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