

# Permissible Expenditures and Compliance Strategies



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## Permissible? Yes/No/Maybe

- Can school district pay for flowers to be sent to a former employee's funeral.
- Can school district pay for lunch during a teacher professional development day.
- Can school district pay for employees' Uber or Lyft fares to the airport for a seminar?
- Provide staff coffee and jelly donuts?
- Contribution to "Yes" Committee for Bond Proposal?
- Spend money leftover in a student activity fund?
- Pay for staff to play in school district's educational foundation golf outing?
- Contribution to School District's Education Foundation?



# Overview

- **Permissible Expenditures**
  - Generally
  - Source Limitations
  - Use Limitations.
  - Specific Prohibitions.
  - Booster and Other School Affiliated Groups.
  - Michigan Campaign Finance Act.
- **Strategies to Comply.**
- **Questions?**

## Permissible Expenditures: Generally

- Three questions to ask to determine if an expenditure is permissible:
  1. What powers does the school district have to expend funds?
  2. What are the specific source and use limitations or specific prohibitions on expenditures?
  3. What is provided for in the school board-approved budget?

# Generally: Constitution



- The Michigan Constitution limits what public schools may spend money on:

## **Article VIII, Section 2**

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. . .

No public monies or property shall be appropriated or paid or any public credit utilized . . . directly or indirectly to aid or maintain any private, denominational or other nonpublic pre-elementary, elementary, or secondary school.

## **Article IX, Section 18**

Sec. 18. The credit of the state shall not be granted to, nor in aid of any pension, association or corporation, public or private, except as authorized in this constitution.

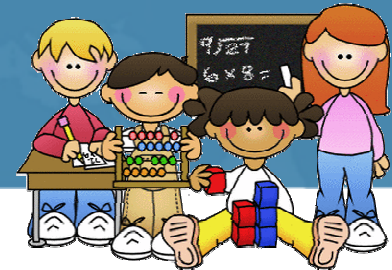
# General Statutory Powers

## General Powers School Districts

- **Express Powers:**
  - Educating pupils
  - Providing for safety and welfare of pupils
  - Acquiring, constructing, and maintaining property
  - Hiring and supervising employees
  - Receiving, investing, and spending district money
  
- May also exercise those powers that are **implied** or **incidental** to these, and exercise a power incidental or appropriate to the performance of any function related to the operation of the school district **in the interest of public elementary and secondary education** within the school district. MCL 380.11a
  
- Requirement of an “Educational Nexus”



# “Educational Nexus”



## Our Definition

Unless some specific **limitation** or **prohibition** has been placed on expenditures from the General Fund, so long as there is a reasonable “**educational nexus**” between the expenditure and the performance of any function related to the operation of a school district in the interests of public elementary and/or secondary education in the school district, the expenditure from the General Fund is **allowed**.

## Source Limitations: Overview

- General Operating Fund:
  - State School Aid
  - Property Taxes
  - Other Sources
- Building and Site Sinking Fund Proceeds
- Bond Proceeds



# Source Limitations: General Operating Fund

## State School Aid

- Section 1618 of the School Aid Act provides as follows:
  - [School districts]... shall apply the money received by the district or entity under this article to salaries and other compensation of teachers and other employees, tuition, transportation, lighting, heating, ventilation, water service, the purchase of textbooks which are designated by the board to be used in the schools under the board's charge, other supplies, **and any other school operating expenditures defined in Section 7.**
- Section 7 further defines “any other school operating expenditures” as follows:
  - Costs for school operating purposes include all expenditures necessary to carry out the powers of the district or intermediate district under the revised school code.

## Source Limitations: General Operating Fund

### Property Taxes



- Section 1211 of the School Code enables School Districts to levy millage “for school operating purposes”
- Section 1216 provides that monies “raised by tax shall not be used for a purpose other than that for which it was raised without the consent of a majority of the school electors”.

# Source Limitations: General Operating Fund

## Other Sources

- Federal appropriations (e.g., Title I Funds, etc.)
- Grant funding
- Gifts – MCLA 380.15
  - “A school district may receive, own, and enjoy a gift ... that is made for school purposes under this act.”
- Other?

# Source Limitations: Building and Site Sinking Fund

Pre-2017 Voter Authorization	Post-2016 Voter Authorization
<ul style="list-style-type: none"> <li>• Voter Approval</li> </ul>	<ul style="list-style-type: none"> <li>• Voter Approval.</li> </ul>
<ul style="list-style-type: none"> <li>• Up to 5 mills for up to 20 years.</li> </ul>	<ul style="list-style-type: none"> <li>• Up to 3 mills for up to 10 years.</li> </ul>
<ul style="list-style-type: none"> <li>• Purchase of real estate for sites for, and the construction or repair* of, school buildings.</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase of real estate for sites for, and the construction or repair* of, school buildings, for school security improvements, or for the acquisition or upgrading of technology.</li> </ul>
<ul style="list-style-type: none"> <li>• NO EQUIPMENT OR FURNISHINGS.</li> </ul>	<ul style="list-style-type: none"> <li>• NO EQUIPMENT OR FURNISHINGS OTHER THAN SCHOOL SECURITY IMPROVEMENTS AND ACQUISITION AND UPGRADING OF TECHNOLOGY.</li> </ul>
<ul style="list-style-type: none"> <li>• NO MAINTENANCE**</li> </ul>	<ul style="list-style-type: none"> <li>• NO MAINTENANCE**</li> </ul>
<ul style="list-style-type: none"> <li>• ANNUAL AUDIT</li> </ul>	<ul style="list-style-type: none"> <li>• ANNUAL AUDIT</li> </ul>

\* Repair – putting back in good condition – curative.

\*\* Maintenance – keeping in good condition – preventative.

Voter approval to replace existing Sinking Fund authorization?

## Source Limitations: Bond Proceeds

### Allowable Use of Bond Proceeds

- Capital improvements and purchases – MCL 380.1351a
- Definition of “technology”
  - Hardware, not software
- Cannot use bond proceeds for:
  - Maintenance;
  - Repairs;
  - Lease payments;
  - Employee salaries; and
  - Automobiles, trucks or vans.



## Use Limitations

- Gifts – MCL 380.15
- Third-Party Contracting – MCL 380.11a(4) and 380.601a(2) (ISDs)
- Investment Income – MCL 380.1223
- Tax Deferred Annuity - 380.1224
- Merit Pay – MCL 380.1250
- Miscellaneous Expenses – MCL 380.1254
- Insurance - MCL 380.1269
- Purchasing – MCL 380.1274
- Transportation – MCL 380.1321 et. seq.
- Professional Development – MCL 380.1525



## Use Limitations: Miscellaneous Expenses

**Section 1254 of the School Code provides that:**

“... a school district may pay **actual and necessary** expenses incurred by its board members and employees in the discharge of official duties or in the performance of functions authorized by the board.”

## Use Limitations: Miscellaneous Expenses

### **Section 1254 further provides as follows:**

- Expenses incurred by a board member must be approved in advance by the board and must be consistent with the board's adopted policy on categories of reimbursable expenses.
- A board may not issue board members credit cards or debit cards that pledge payment of funds from a school district account except in compliance with law.



## Specific Prohibitions



- **Alcohol, jewelry, gifts, golf fees and other illegal items** – MCL 380.1814
- **Extra Compensation** – Article II, Section 3 of the Michigan Constitution
- **Sectarian Schools** – MCL 380.1217
- **Foreign Goods** – MCL 388.1764c
- **Rental Cars & Chauffeurs** – MCL 380.1217a and 388.1764
- **Performance-Enhancing Drugs** – MCL 380.1318
- **ISD Specific Legislation** – MCL 380.634
- **Mercury** – MCL 380.1274b

## Specific Prohibitions

**Effective in 2015, Section 1814 provides as follows:**

- Prohibits the use of school district funds to purchase alcoholic beverages, jewelry, gifts, golf fees, or any items that cannot be legally purchased or possessed.
- Violation is a misdemeanor punishable by imprisonment up to 93 days and/or a fine.
- Violator subject to restitution.

## Michigan Department of Treasury: Permissible Expenditures



### Coffee/Meals

“The purchase of coffee, donuts and sandwiches first must be for a public, not an individual or private group or purpose. These expenditures for use at a regular or special meetings, for fire fighters, volunteer or full time employees, when working an extended period of time or when dedicating public buildings are normally considered expenditures for a public purpose.

Coffee and donuts for employees use during normal working hours is considered personal, not for a public purpose, and improper unless specifically provided for in a collective bargaining agreement or duly adopted employment policy of the governmental unit (fringe benefit).”

# Michigan Department of Treasury: Permissible Expenditures

## Lawful Expenditures by a Governmental Unit

- Contracts with public or private, profit or nonprofit organizations for a specific public service or benefit that the unit can legally perform and money is available within the budgeted appropriations.
- Membership dues to governmental associations.
- Meals and refreshments during authorized seminars of an educational nature to officials and employees.
- Registration fee, lodging and travel for attendance at useful public informational or educational workshops and seminars.

# Michigan Department of Treasury: Permissible Expenditures

## Unlawful Expenditures by a Governmental Unit

- Contributions to churches, veterans, non-profit organizations
- Donations to community organizations
- Office refreshments, picnics
- Retirement recognition gifts and/or events
- Flowers to the sick or departed



## Booster and Other School Affiliated Groups

- Trust Funds:
  - School District acts as trustee
  - Endowments, gifts and bequests
- Agency Funds:
  - Custodial account
  - Student activity funds and other school organizations such as parent booster clubs
- Restrictions on Use of Funds?



## Michigan Campaign Finance Act “MCFA”

- School districts are prohibited from spending public funds or using other resources for **campaign activities**, including the election or defeat of candidates or ballot proposals.
- School districts cannot **advocate** for a ballot proposal but may use its resources **to inform** (i.e. factual information).



## Michigan Campaign Finance Act “MCFA”

**The MCFA carves out several exceptions to the rule against using public resources for political expression which include the following:**

- (a) The expression of views by an elected or appointed public official who has policymaking responsibilities.
  - (b) The production or dissemination of factual information concerning issues relevant to the function of the public body.
  - (c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.
  - (d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.
- \* \* \*
- (f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.



## Strategies to Comply

- **Board Policy:**
  - Specific Board Policy may be required in certain circumstances.
  - Board Policy may be more restrictive than the law.
- **Approve budget with category/amount for miscellaneous expenditures**
- **Prior Approval of Expenditures**
- **Educate Staff on Legal Boundaries of Prohibited Expenditure**
- **Be Aware of Purchasing Cards:**
  - In addition to credit card policy required under MCL 129.243, make policy clear that any unauthorized use of credit card is liability of employee.
- **Conduct Regular Internal Audits**

# James M. Crowley

James Crowley  
Principal



Jim Crowley is a member of the Public Finance Practice Group in Miller Canfield's Detroit office, where he concentrates his practice in the areas of school finance, election and general school business law.

Jim has extensive experience in school finance and regularly serves as bond counsel, note counsel, underwriter's counsel, and disclosure counsel for public schools and other issuers.

In these capacities he has served as counsel relating to tax-exempt and taxable financings, fixed and variable rate financings, general obligation and revenue financings, unlimited and limited tax financings, conduit financings, installment purchase agreements, finance leases and operating cash-flow borrowings including state aid notes, tax anticipation notes and lines of credit.

Jim is also well versed in all aspects of the Michigan School Bond Qualification and Loan Program available to public school districts, and has extensive experience with school elections for school bond proposals, operating tax proposals (i.e. renewals, increases and Headlee restorations) and school building and site sinking fund proposals.

Jim also has a wealth of experience in general business law as it relates to public schools including school finance matters under the School Code and the State School Aid Act, employee benefit matters (i.e. MPSERS, 403(b) and 457 plans, etc.), tax law matters and tax-exempt organizations (i.e. education and other foundations, boosters clubs and other affiliated organizations).

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Wayne State University, J.D., 1984

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## Professional Activities

National Association of Bond Lawyers  
American Bar Association  
The Incorporated Society of Irish American Lawyers

## Articles

Sinking Fund Legislation Approved by Senate

# Dorothy J. Heebner



Dorothy is involved in matters relating to public entity financing, including municipal infrastructure finance and school finance. She also prepares advice for governmental clients on general matters, including intergovernmental collaborations, legislative drafting, and election law and campaign finance compliance.

## Honors

University of Michigan Dual degree student scholarship

Michigan Journal of International Law: Associate Editor, 2013-2014, Executive Editor, 2014-2015

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## Thank you! Any Questions?

- This document is not intended to give legal advice and does not establish any attorney-client relationship. It is comprised of general information. School Districts facing specific issues should seek the assistance of an attorney.

