

FOREWORD

It was the intent of this office, when creating the following questions and answers, to apply the School Support Organization Financial Accountability Act of 2007 (hereinafter referred to as the “SSOFAA”) to various scenarios that may arise in the day-to-day operations of schools and their valuable support organizations. The responses to the questions were crafted in a way so as to adhere to the language of the statute while also preserving the legislative intent of the Act. It is apparent from Section 3 of the Act, that the General Assembly recognizes the importance of school support organizations and does not wish to create any hindrance to their objectives and desires, which are to assist and promote educational and extracurricular activities in the local school systems. The chief concern of the General Assembly, however, appears to be the implementation of greatly needed guidelines to ensure that all the funds raised for students and education are used for the benefit of students and education. Alarming, this office investigates numerous instances of theft and fraud every year which costs school support organizations and schools tens of thousands of dollars. This legislation was designed to prevent such a loss of funds and to enact safeguards to protect students, schools, and school support organizations. Any controls mandated by the Act pale in comparison to the overall statewide need to protect schools and school support organizations from theft and fraud, and to ensure that funds intended to benefit children and their education are used accordingly.

DISCLAIMER

The following questions and answers are intended to provide guidelines that individuals and entities may choose to follow. The views expressed in the question and answer session are not the views or policies of the Comptroller, the Secretary of State, the Department of Revenue, the General Assembly, or the Governor. What follows are merely suggestions on how to read the SSOFAA in order to encourage continued cooperation and support between school support organizations and schools amidst the changes required under the legislation. The answers provided hereinafter are not statements of the law nor are they the opinions of the State Attorney General as to how a court would interpret the Act, but rather reasonable parameters within which the school support organizations and schools can operate. However, adherence to the law remains solely the responsibility of the individual school support organization or school and the following answers cannot be used as a defense to any civil or criminal violations that may occur from noncompliance with the Act. Should individuals have additional questions, they should be submitted to the Comptroller of the Treasury, Division of Municipal Audit at the following e-mail address:

<mailto:TN.Municipal.Audit@state.tn.us>

The School Support Organization Financial Accountability Act of 2007 (as amended, 2008)

Some changes were made this year to the School Support Organization Financial Accountability Act of 2007. The following is a brief discussion of those changes and how they affect school support organizations, schools, and fundraisers.

SSOFAA Update (2008) Key Changes in the Law

Student Activity Funds:

The definition of “Student Activity Funds” changed this year and reflects the distinction between “school sponsored” events and “school support organization” sponsored events. Previously, the law did not distinguish between a “school-sponsored” or “support organization-sponsored” fundraiser. So long as the fundraiser involved a social, art, academic, or athletic event involving students where money was made, they were “student activity funds.” However, the 2008 Amendment changed the language so that if the booster club or support organization **sponsors** the fundraiser, then the SSO is responsible for collecting and accounting for the money, even if the fundraiser is held on school property during the school day with students and teachers involved. Generally, it depends on who assumes responsibility for the fundraiser and sponsors the event.

Filing a copy of your charter with the Secretary of State:

The law still requires that an SSO file a copy of its charter with the Secretary of State. However, the 2008 Amendment waives the One Hundred Dollar filing fee with the Secretary of State. (That does not waive any fees that are associated with the corporation’s annual report, just the initial \$100 fee for the Form SS-4418)

The 2008 Amendment also clarified who is considered an SSO and thereby required to file as a nonprofit and who is not. The Amendment makes it more clear that a group of people or volunteers, who assist in the raising of funds for a specific purpose under the sponsorship of the school or a school employee, where the funds are turned over to and accounted for by the school, are not considered to be an SSO. Such groups of people do not have to file a charter with the Secretary of State and comply with the requirements of this Act if that group of people or volunteers just assists the school and the school is responsible for the fundraising and accounting of the money. But, importantly, if the money was raised for a specific purpose, it must be spent on that specific purpose, according to the Tennessee *Internal School Uniform Accounting Policy Manual*. This allows smaller groups, who do not wish to incorporate or maintain records of their fundraising efforts and keep bylaws, etc., to continue to raise money to support schools

and programs at those schools, while alleviating their responsibility of accounting and safeguarding the money thereby shifting the financial responsibility to the school.

Filing as a 501(c)(3) with the IRS:

Under the SSOFAA of 2007 and as amended in 2008, a school support organization **does not** have to file with the IRS as a 501(c)(3) federally tax exempt corporation.

Turning in fundraising money for an SSO fundraiser at school:

With approval from the principal and pursuant to board policy, students can turn in money collected outside of school for a booster club/SSO fundraiser during the school day, so long as the money is in a **sealed envelope** and **never opened by anyone other than the member of the SSO responsible for handling that money**. The school and its employees who take up the envelopes merely act as a “pass through” for the sealed envelopes and the funds inside, on behalf of the SSO. There can be no accounting for the funds at the school by school personnel or employees.

Boosters and bookstores:

A principal can grant permission to a booster club/SSO to operate a bookstore located on school grounds as long as the booster club/SSO runs, collects and accounts for the money and spends 100% of the profits in support of the school. The booster club/SSO is required to comply with the Tennessee *Internal School Uniform Accounting Policy Manual* (ISUAPM) when handling, collecting and accounting for the money at the bookstore.

In a Nutshell

A school support organization must:

- + File a copy of their charter with the Secretary of State.**
 - + Maintain some organizational structure to the booster club (bylaws, officers, rules for meetings and membership, etc.)**
 - + Maintain minimum procedures for accounting for and protecting the money raised.**
 - + Get permission from the director of schools or his/her designee to conduct fundraisers.**
 - + Keep up with records (copy of charter, list of officers and their contact information, bylaws, accounting policy/rules, total receipts and disbursements)**
 - + Document and maintain a detailed list of receipts and disbursements.**
 - + Annually file a statement of total revenues and disbursements with the director of schools or his/her designee before the end of the school year.**
 - + Maintain adequate separation of duties between SSO officers and school employees who are in charge of the related school club or athletic group the SSO supports (Don't let the football coach be the football booster club bookkeeper, etc...the related official/employee from the school can not be the SSO's bookkeeper or sign checks for the SSO).**
- **Remember, if money is collected by a school employee acting in his or her official capacity, such money is considered to be school money and must be deposited into the school's account.**

QUESTIONS AND ANSWERS
Updated June 2008

FREQUENTLY ASKED QUESTIONS

School Support Organization Financial Accountability Act of 2007 (SSOFAA)

- 1. Does the SSOFAA require school support organizations to have 501(c)(3) status? What are the consequences of not having that status?**

No. The SSOFAA does not require school support organizations to be recognized as 501(c)(3) organizations. Provisions set forth in the SSOFAA do not affect IRS requirements related to school support organizations in any way.

Although not required, filing for and receiving 501(c)(3) exemption from the Internal Revenue Service and following all applicable guidelines provides a school support organization federal tax-exempt status, and allows the organization to benefit from the advantages of such status. Each individual organization is urged to consult with the IRS (www.irs.gov) and/or a tax professional for questions concerning federal tax requirements and/or exemptions.

The following sites may help with questions regarding 501(c)(3) exemption. (<http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>) (<http://www.irs.gov/pub/irs-pdf/p557.pdf>)

- 2. What type of documentation is required for recognition as a nonprofit entity?**

A school support organization, under the SSOFAA, must show proof of its “continued existence as a nonprofit entity”. It is the opinion of this office that in order to exist in the State of Tennessee as a nonprofit entity, the organization must incorporate as a nonprofit entity by filing a copy of its charter with the Secretary of State, Division of Business Services. It was also the intent of the legislature that school support organizations and booster clubs incorporate in this state as non-profit entities. The forms and procedures necessary for incorporating as a nonprofit entity can be found at the following web address for the Secretary of State. (http://state.tn.us/sos/bus_svc/forms.htm#nonprofit)

It is the responsibility of the school support organization to ensure that all filing requirements or any guidelines for incorporation required by the Secretary of State are met.

If an organization is not incorporated as a nonprofit entity, then that organization cannot be considered a school support organization within the Act. There are no exceptions or exemptions within the SSOFAA that would permit an improperly

formed school support organization to operate in conjunction with a school without filing a charter (incorporating) with the Secretary of State.¹

A school support organization does not automatically become a tax-exempt organization merely by incorporating in Tennessee as a nonprofit entity. A school support organization must separately file with the Internal Revenue Service as a 501(c)(3) corporation and follow all necessary procedures established by the Tennessee Department of Revenue in order to be exempted from state sales tax. (<http://www.tennessee.gov/revenue/>) But filing as a 501(c)(3) with the IRS is not required by the SSOFAA.

3. Does the SSOFAA require school support organizations to obtain a federal employer identification number (EIN) or state sales tax exemption?

No. The SSOFAA does not require school support organizations to obtain an EIN or sales tax exemption. However, the Act prohibits school support organizations and other nongovernmental groups from maintaining a bank account bearing the EIN of a school or of other school-related governmental entities, and from using a school's sales tax exemption.

Banking institutions generally require a tax identification number, either an EIN or social security number, in order to open a bank account. Using an individual's social security number for identification of a school support organization account creates potential tax and credit issues for the holder. Therefore, this office strongly encourages each school support organization to obtain a federal EIN for use in opening bank accounts. The application form for obtaining an EIN can be accessed at the (www.irs.gov) homepage under "Most Requested Forms and Publications" by clicking on Form SS-4. (NOTE: Organizations are not required to have federal 501(c)(3) exemption status to obtain an EIN.)

In order to be exempted from state sales tax, a school support organization must separately apply with the Tennessee Department of Revenue and be accepted by the IRS as a 501(c)(3) corporation.

4. Does the SSOFAA require, in any form, school support organizations to turn over the funds in their accounts, for any reason, to a school for which they raise the money?

No. There are no provisions in the Act requiring the school support organizations to turn their money over to a school for accounting or any other purposes. However, the Act does state that school support organization funds deposited into a bank account bearing the EIN of a school are deemed to be donations from the organization to the school.

¹The exemptions in Title 48, *Tennessee Code Annotated*, addressing charitable solicitations and the filing requirements with the Secretary of State, do not apply to the School Support Organization Financial Accountability Act.

5. **Can a school be responsible for accounting for the funds of a school support organization by mutual agreement as provided for in the *Internal School Uniform Accounting Policy Manual*, Section 1, pages 4 – 5?**

No. *Tennessee Code Annotated* 49-2-604(g), expressly prohibits a school representative (i.e., a school board member, director of schools, principal, or any individual who is primarily responsible for accounting for school system funds or the funds of an individual school) from acting as a treasurer or bookkeeper for a school support organization.

Any funds turned over to the school by a school support organization would be considered internal school funds and would belong to the school and be handled by school personnel. However, part 607, section (b) of the Act specifically requires that

Any donation made by a school support organization to a board of education or school shall be disbursed only in accordance with written conditions that the school support organization may place upon the disbursement of the funds and shall be in accordance with the goals and objectives of the school support organization.... School support organization funds that are donated to an individual school shall not be considered as student activity funds. These funds shall be considered instead as internal school funds from the point of their donation to the respective school....

Keep in mind that, even if a school support organization does not maintain a separate bank account and, instead, turns over all proceeds from every event directly to the school, the organization would still fall under the purview of the SSOFAA if the organization is soliciting, raising, or collecting money, materials, property, or securities to support a school district, school, school club, or any academic, arts, athletic, or social activity or event related to a school while using the school district or individual school's name, mascot, property or logo.

Assuming proper local board policy is in place, nothing in the Act would prohibit a group or organization from assisting with school-sponsored fundraisers or events, or from soliciting donations to be given directly to the school by the donor.

Moreover, the SSOFAA (as amended in 2008) expressly allows community volunteers/parents to assist and collaborate with a school or a school employee supervising a fundraising activity which raises money for a specific school club, art, academic or athletic event or purpose and the TISUAPM requires the funds raised for a specific purpose to be spent accordingly.

6. **Does the SSOFAA require school support organizations to have an audit?**

No. The SSOFAA does not require school support organizations to have an audit. However, federal, state, grant, local board of education, or other regulations may require some type of audit. The Act requires school support organizations to provide, at a minimum, a statement of total revenue and disbursements to the director of schools or his/her designee before the end of the school year.

Please note that although the SSOFAA does not require school support organizations to have an audit, the Act provides that the Office of the Comptroller of the Treasury has the authority to perform audits of such organizations at the Comptroller's discretion. In addition, the Act authorizes the Comptroller of the Treasury to "adopt a model financial policy for school support organizations." The adopted model policy suggests that school support organizations conduct a "financial review."

7. **What is the implementation process and time frame for this law?**

The SSOFAA requires that the local school boards adopt a policy concerning local school support organizations and publish a list of recognized organizations by July 1, 2008. However, all other provisions of the law were applicable as of July 1, 2007, such as the provision which requires the SSO/booster club to maintain a separate bank account from that of the school.

Note regarding student involvement in school support organization fundraisers:

Many questions have been raised regarding fundraising and other activities that involve participation by students and/or school personnel. According to the SSOFAA, all money received from any source for "school-sponsored" student activities or "school-sponsored" events held at or in connection with a school including any money derived from a "school-sponsored" academic, art, athletic, or social event involving students, would be considered student activity funds. Therefore, this money must be accounted for within the school accounting records and deposited into a school bank account.

Since any money raised from a "school-sponsored" event belongs to the school as student activity funds, then any money raised from a "school support organization sponsored" event belongs to the SSO.

Few questions are raised related to money received from academic, art, or athletic events. However, many questions relate to money received for social events held at or in connection with a school, including school dances, proms, banquets, etc., that are sponsored by school support organizations. As noted above, the SSOFAA (as amended, 2008) makes it clear that all money received from any source for “school-sponsored” student activities held at or in connection with a school including “school-sponsored” social events such as student dances, etc., are considered student activity funds. However, the Act neither inhibits nor impairs in any way, the ability of school support organizations to sponsor their own social event and retain the funds in the name of the SSO as school support organization funds.

Many questions have also been raised regarding money received from fundraisers in which students, school personnel, and/or school property are involved. As stated above, funds raised at “school-sponsored” events or activities held during the school day at which school personnel, students, and school property are involved, are student activity funds. Moreover, if a school employee supervises a “school-sponsored” fundraising event at which students are involved, those funds are student activity funds. However, funds raised at “school support organization sponsored” events, regardless of whether or not they are held on school property during the day, belong to the SSO.

Please note that the *Internal School Uniform Accounting Policy Manual* requires internal school funds to be used for the purposes for which they were received. Therefore, if school personnel and community volunteers collaborate together on a project or event designed to raise money for a particular purpose, then a school official is prohibited from using that money for other purposes.

The following questions address specific examples of fundraisers involving students and/or school personnel. The answers presume that the school support organization involved has been certified by the local board of education and has received required approval for the fundraising activity.

8. **Can a school support organization use school facilities to conduct a fundraiser? If so, can such a fundraiser be held during the school day as defined by the Act?**

The answer depends on local school board policy. The SSOFAA states that a group or organization may not use school facilities for raising money, materials, property, or securities **until** the local board of education has adopted a policy, including required minimum provisions set forth in the Act, concerning cooperative agreements, school support organizations, and the use of school facilities for fundraising purposes. (Emphasis added.) Therefore, local school board officials must decide whether the use of school facilities for fundraising purposes by school support organizations or other outside groups or organizations will be allowed, then adopt appropriate policy.

9. **Would a school support organization be allowed to retain collections from a school dance held for students at the school (for instance, the Homecoming Dance), if the organization was responsible for set-up, collections, clean-up, etc.?**

Yes. As long as the SSO “sponsors” the event and is solely responsible for the event, collecting and accounting for the money, safeguarding the funds and depositing the funds into the SSO account in a timely manner (for example, within 3 business days).

10. **Can a kick-off assembly be held at the school during the school day to promote the start of a school support organization resale fundraiser, such as a candy sale in which students will be participating?**

Yes. As long as the SSO “sponsors” the event and is solely responsible for every aspect of the event.

11. **Could the soccer coach participate in a car wash fundraiser sponsored by the soccer booster club to benefit the soccer team?**

Yes. If the car wash fundraiser is “sponsored” by the SSO, the soccer coach could participate in washing cars. However, the soccer coach could not be responsible for supervising the event for the SSO, including any related financial activities.

According to the SSOFAA, the soccer coach would be considered a “school representative” in relation to the soccer team and its booster club. The SSOFAA prohibits a school representative from acting as treasurer or bookkeeper of a school support organization, or from being a signatory on checks. The Act does not prohibit a school representative from taking part in a related school support organization fundraiser, so long as the school representative is not responsible for collecting, counting, or depositing the funds raised.

12. **Could the band director (a school employee) sell fruit or other items in a fundraiser sponsored by the band booster organization and turn his/her related collections over to the band booster treasurer for that event?**

Yes. The band director could personally sell fruit or other items in a fundraiser sponsored by the band booster club.

According to the SSOFAA, the band director would be considered a “school representative” in relation to the band booster club, and therefore, could not act as bookkeeper or treasurer, or be a signatory on the bank account. The Act does not prohibit the band director from individual participation in a resale fundraiser conducted by a school support organization as long as the director is not responsible for supervising the event, including the financial activities.

13. **Can a school support organization sell t-shirts to students at school and keep the money?**

Yes. If school support organization personnel are responsible for all aspects of the fundraiser, then money received from sales of the t-shirts, including shirts sold to students, would generally be considered school support organization money.

If the t-shirts are sold in a bookstore located at the school that is run/operated by the SSO/booster club, money received from the sales would be considered SSO/booster club funds as long as the principal grants the SSO/booster club permission to operate the bookstore. The SSOFAA (as amended in 2008) allows the local board and principal to enter into an agreement with an SSO to run a bookstore located on school property as long as 100% of the profits are used for support of the school and the SSO complies with the *Internal School Uniform Accounting Policy Manual* when operating the bookstore.

If the bookstore is not operated and run by the school support organization, then a t-shirt sale by the booster club cannot be done from the school bookstore and appropriate measures must be taken to maintain adequate separation between the school and its involvement with the t-shirt sales and the school support organization’s involvement as the “sponsor” of the fundraiser.

14. **Can a school support organization hold a steak dinner or auction on school grounds at night with students selling tickets, and school support personnel and students working at the event and the proceeds be considered school support organization funds?**

Yes. Assuming authorizing local school board policy exists, if school support organization personnel are responsible for supervising the planning and operation of the event, including related financial activities, then proceeds from such an event would generally be considered school support organization funds.

15. **Can a walk-a-thon, fun run, or other like event be held during the school day on school property and proceeds from pledges obtained by students/school employees participating in the event be retained by a school support organization?**

Yes. As long as the local board allows such a fundraising activity, an SSO can “sponsor” such an event and the proceeds of that fundraiser will belong to the SSO/booster club.

Contact Information

Comptroller of the Treasury

Division of Municipal Audit
Bank of America Plaza, Suite 1100
414 Union Street
Nashville, TN 37219
Phone: 615-532-4460

<http://comptroller.state.tn.us/cpdivma.htm>

Fraud Waste and Abuse Hotline
1-800-232-5454

Tennessee Secretary of State

Information related to obtaining nonprofit status from the State of Tennessee

Business Services
312 8th Avenue North
6th Floor, Snodgrass Tower
Nashville, TN 37243
Phone: (615) 741-2286

http://www.tennessee.gov/sos/bus_svc/forms.htm#nonprofit

Tennessee Department of Revenue

Information related to obtaining state sales and use tax exemption

Statewide toll-free: (800) 342-1003
Nashville and out-of-state: (615) 253-0600

<http://www.state.tn.us/revenue/>

Internal Revenue Service

Application for Employer Identification Number
Information related to obtaining 501 (federal) tax exempt status
<http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>
<http://www.irs.gov/pub/irs-pdf/p557.pdf>