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# California Legislature

## Joint Legislative Audit Committee

GOVERNMENT CODE SECTION 10500 et al

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December 7, 1979

Letter Report 932

Honorable Richard Robinson  
Chairman, and Members of the  
Joint Legislative Audit Committee  
Room 4158, State Capitol  
Sacramento, California 95814

Dear Mr. Chairman and Members:

In response to a resolution by the Joint Legislative Audit Committee, we have conducted a survey of fees charged to students and purchases required of students in California's elementary, junior high, and high schools. This examination was conducted under the authority vested in the Auditor General by Section 10528 of the Government Code.

We reviewed the various fees charged for curricular and extracurricular activities, basic raw materials for workshop classes, athletics, summer school, and transportation to and from school.\* In addition, we examined the extent to which fees are charged in school districts defined as high poverty and low poverty according to the percentage of students whose families receive Aid to Families with Dependent Children (AFDC).

\* Curricular activities in high school include those for which academic credit is received. In the elementary and junior high schools, they are activities scheduled during school hours. Extracurricular activities are any which fall outside these parameters.

### SUMMARY

In conducting this study, we identified two practices of districts and schools--charging students a flat fee for participation in an activity and requiring students to make a purchase to participate in an activity. Throughout the report, the term fee-charging is used to include both these practices, while the phrases flat fee or required student purchase will be cited to differentiate between the two. The predominant practice we found was the required student purchase.

In the 30 district offices and 60 schools we visited, we found that students incurred costs for the following items: paper, pencils, course fees, gym suits, gym shoes, music classes, club participation, special uniforms, athletics, field trips, basic raw materials for certain courses, and summer school programs. The frequency of fee-charging and the cost per student for these items varied considerably.

We found that students incurred costs for items used in curricular and extracurricular activities. The highest instances of fee-charging occurred for these items: in 78 percent of the schools, students purchased their own gym shoes; in 82 percent of the schools, students purchased special uniforms such as cheerleading uniforms; and in 71 percent of the high schools, students incurred costs for participating in athletic programs.

Within the categories of summer school and transportation, we found that four districts offered a fee-based summer school program. Most districts provided free transportation to and from school to students who met district criteria. But most students paid for extracurricular field trips.

Further, we found that pupils in high poverty schools more frequently must purchase pencils and gym suits. Pupils in low poverty schools were charged more frequently for curricular field trips, special uniforms, and athletics. Also, while both high poverty and low poverty districts in our sample offered summer school, only low poverty districts have offered fee-based summer schools. All of the schools identified as low poverty had provisions to assist students who could not pay flat fees or make required purchases.

## BACKGROUND

California State laws address the practice of charging fees to students. To further clarify this issue, we requested that the Legislative Counsel respond to questions on fee-charging. This response is reprinted in Appendix A.

### State Law

Section 5 of Article IX of the California Constitution requires the Legislature to provide for a system of free common schools. By statute, the Legislature has provided in Section 60070 of the Education Code that

no school official shall require any pupil, except pupils in classes for adults, to purchase any instructional materials for the pupils' use in the school.

Additionally, Section 350, Title V, of the California Administrative Code states in part

a pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.

These provisions cover most of the areas we reviewed. We have noted exceptions to the general prohibitions against charging fees in our narrative.

### Legislative Counsel Opinion

In elaborating on the current law, the Legislative Counsel addressed the charging of fees for curricular and extra-curricular programs and required student purchases. With specified exceptions, the Counsel stated there is

no statutory or regulatory authority . . . which authorizes the governing board of a high school to require pupils to pay a fee in order to participate in a course offered as part of the regular school program.

The Legislative Counsel also stated that although school districts are not required to provide extracurricular programs, "once the programs are provided, the district may not impose a fee, charge, or deposit for the programs or equipment and materials used."

Furthermore, the Legislative Counsel considers a requirement for a student purchase to be "tantamount to a required charge."

SCOPE AND METHODOLOGY

Our review was designed to provide descriptive information based on visits to 30 school districts. The districts were selected using a combination of stratified sampling and judgment sampling. Also, we considered these parameters in our selection:

- Equal numbers (10 each) of urban, suburban, and rural school districts as categorized using Department of Education criteria;
- One-half high poverty and one-half low poverty districts as defined by district enrollees in Aid to Families with Dependent Children (A district with an AFDC rate greater than 9 percent was considered to be a high poverty district.);
- Six elementary school districts, 12 high school districts, and 12 unified school districts.

The table below depicts our sample of school districts.

TABLE 1

	Urban		Suburban		Rural	
	High Poverty	Low Poverty	High Poverty	Low Poverty	High Poverty	Low Poverty
Elementary	1	1	1	1	1	1
High School	2	2	2	2	2	2
Unified	2	2	2	2	2	2

We prepared a questionnaire for interviewing administrators in each district office and in two schools within the district. Their responses were recorded and no further verification was performed.

We visited a total of 11 elementary schools, 14 junior high schools, and 35 high schools. Each school and district is listed in Appendix B. The sample includes a larger number of high schools because programs at that level provide a greater likelihood of fee-charging.

Although the sample, as selected, documents the practice of charging fees, its limited size prohibits us from making projections to all districts in the State or providing statewide statistics regarding the magnitude and nature of fees.

#### STUDY RESULTS

Our review disclosed several types of fees and varying circumstances under which they may be charged. To conduct our analysis, we categorized fee-related items into these groups:

- Miscellaneous items: paper, pencils, laboratory fees, gym clothes, music classes, clubs, uniforms, and student body cards;
- Courses requiring basic raw materials: courses in homemaking, wood shop, metal shop, and auto shop;
- Athletics: optional competitive athletic programs;
- Summer school programs;
- Transportation: to and from school; educational field trips; and extracurricular field trips.

Accordingly, the remainder of the report will follow this organizational pattern.

Curricular and Extra-  
 curricular Items

Generally, we found that students incur costs in most of the areas we reviewed and that the practice of fee-charging crosses curricular and extracurricular lines. We identified the nine curricular and extracurricular items for which fees might be charged: paper, pencils, laboratory fees, gym suits, gym shoes, music classes, club participation, special uniforms, and student body cards.

Table 2, which follows, illustrates the results of this section of the survey. The two most frequent charges were for gym shoes, 78 percent, and special uniforms for some extracurricular activities, 82 percent. Student body cards were the only items for which fees or student purchases were never required.

TABLE 2

FEE CHARGES FOR CURRICULAR  
 AND EXTRACURRICULAR ITEMS

	Yes		No		Schools With No Relevant Programs
	Number of Schools	Percentage* of Schools	Number of Schools	Percentage* of Schools	
Paper	14	23%	46	77%	0
Pencils	16	27%	44	73%	0
Laboratory Fees	2	4%	51	96%	7
Gym Suits	23	38%	37	62%	0
Gym Shoes	47	78%	13	21%	0
Music	4	7%	51	93%	5
Club Participation	17	35%	32	65%	11
Special Uniforms	40	82%	9	18%	11
Student Body Cards	0	0%	45	100%	15

\* Percentage based on schools with relevant programs, those which, for example, offered chemistry or physics and thus may have charged a laboratory fee.

### Fee-Charging Practices

Within those schools where students were expected to provide their own paper (14 schools) and pencils (16 schools), provisions were available for those who did not. In the schools which required no fee or purchase, the administration provided such basic supplies on a systematic basis. For example, teachers distributed pencils once a month in home room.

In the categories of gym suits and shoes, each of the 23 schools required all students to purchase a standard gym suit. The estimated costs of gym suits ranged from \$3 to \$14. In the other 37 schools, gym suits were optional. In schools where students had to purchase gym shoes, a variety of shoes could be worn, but they had to be appropriate for physical education activities. The estimated price range for such shoes was \$5 to \$30.

The most frequent costs related to music classes were student purchases of musical instruments. At three schools, students were required to provide their own instruments. Most schools had a minimal supply of instruments available, an arrangement which meant that a student would not be denied participation in the class, although he or she might not have an opportunity to learn the instrument of his or her choice. Therefore, students often voluntarily rented or purchased their own instruments.

Seventeen schools could require a fee for club participation; in these schools clubs were permitted to charge dues. In schools which did not charge dues, club members carried out revenue-generating activities to support their organizations' activities.

The special uniforms category pertains to cheerleading, band, pep squad and other similar activities. Forty of the schools had at least one activity in which a purchase was required for a uniform. Prices for cheerleader uniforms were the highest and ranged from \$10 to \$400. The lowest price was in a junior high school where students made their own uniforms. The highest price was found in a high school in which cheerleaders had uniforms for different seasons.

Student body cards were available at 45 schools and were always optional purchases. The cards allowed students to attend school events and in many cases purchase yearbooks at a reduced price. The price for student body cards ranged from \$1 to \$20.

Curricular Activities  
Requiring Basic Raw Materials

Section 39526 of the California Education Code addresses curricular activities which require raw materials by providing that a school district furnishing materials may sell at cost "items the pupil has fabricated from such materials."

During our survey we found that two types of fees--flat fees and mandatory student purchases--were used for courses such as homemaking, arts and crafts, photography, metal shop, and plastics. Of the schools offering these programs, 24 percent charged students a flat fee ranging from \$1 to \$16. In over half of those schools, students may have incurred additional costs for raw materials used in the courses.

The practice of requiring mandatory purchases varied and depended upon whether a project was basic or advanced. Advanced projects are optional projects which can be completed in addition to or instead of the regular class projects and which exceed the basic course requirements. In 18 percent of the schools offering the courses listed above, students were required to purchase materials to satisfy basic course requirements. In 90 percent of the schools, students incurred costs when they elected to complete advanced projects.

The following discussion addresses general fee-charging practices in vocational education courses and includes a profile of fee charges and student purchases in four specific courses: homemaking, wood shop, metal shop, and auto shop.

Of the 60 schools we visited, 54 offered courses requiring basic raw materials. Within these schools, we identified three predominant practices: charging a flat fee to all students, charging for raw materials for basic instruction, and charging for materials for advanced projects. Some schools used a combination of these practices.

Flat Fees

Thirteen of the 54 schools charged students a flat fee for participating in at least one of the courses requiring raw materials. For example, all students enrolling in a woodworking class were charged \$1 as a shop fee. In nine of the 13 schools, students also incurred additional costs for the purchase of raw materials. So in addition to paying the \$1 fee, the student could have purchased \$12 worth of pine for a specific project.



The following table illustrates, by course, the number and percentage of schools which charged flat fees and the range of the fees.

TABLE 3  
 FLAT FEES--CURRICULAR ACTIVITIES  
REQUIRING RAW MATERIALS

<u>Course</u>	<u>Yes</u>		<u>No</u>		<u>Schools Not Offering Course</u>	<u>Range of Fees</u>
	<u>Number of Schools</u>	<u>Percentage* of Schools</u>	<u>Number of Schools</u>	<u>Percentage* of Schools</u>		
Homemaking	6	12%	44	88%	10	\$1-\$10
Wood Shop	8	16%	42	84%	10	\$1-\$7
Metal Shop	5	12%	35	88%	20	\$1-\$16
Auto Shop	4	14%	24	86%	32	\$1-\$5

\* Percentage based on schools offering these courses.

Charges for Raw Materials  
 for Basic Instruction

Aside from charging flat fees, a second practice was for schools to charge for raw materials for a basic project which a student must complete to satisfy the course requirements. Ten schools had at least one class which required a student to purchase the basic raw materials. In the remaining 44 schools, students were supplied raw materials for basic instruction at no cost. In some of these schools, students may have preferred to purchase their own special materials. Hypothetically, a homemaking student may have chosen to purchase silk for a sewing project rather than use the cotton provided by the school. Therefore, when the school provided basic materials, a student could have completed the course requirements without incurring a cost.

Purchase Requirements  
 for Advanced Projects

A third practice we identified was requiring students to purchase raw materials for advanced projects. Forty-nine of the schools offering courses using raw materials required students to purchase the materials used for additional projects. Many school administrators emphasized, however, that students were charged for such materials only if they planned to take the constructed projects home.

Table 4 below illustrates, by course, the number of schools which required students to purchase raw materials for advanced projects. The cost incurred varied based upon the project selected.

TABLE 4

PURCHASE REQUIREMENTS  
 FOR ADVANCED PROJECTS

<u>Course</u>	<u>Yes</u>		<u>No</u>		<u>Schools Not Offering Course</u>
	<u>Number of Schools</u>	<u>Percentage* of Schools</u>	<u>Number of Schools</u>	<u>Percentage* of Schools</u>	
Homemaking	40	80%	10	20%	10
Wood Shop	47	94%	3	6%	10
Metal Shop	38	95%	2	5%	20
Auto Shop	21	75%	7	25%	32

\* Percentage based on schools offering these courses.

Athletic Programs

In this category, we found that 71 percent of the high schools, 21 percent of the junior high schools, and 33 percent of the elementary schools charged student fees for participation in athletic programs. (The higher percentage of fee-charging in high schools may be attributed to the greater complexity and variety of high school athletic programs.) Fifty-seven of the schools surveyed offered athletic programs. Thirty of the 57 schools required student purchases which varied by school and by sport. The highest estimated purchase for a student on one team was \$84. Two of the 30 schools required an additional flat fee, the highest of which was \$25 per student.

Table 5 illustrates the differences in fee charging by school level.

TABLE 5

FEE CHARGES FOR ATHLETIC PROGRAMS

	<u>Yes</u>		<u>No</u>		<u>No Program</u>	<u>Total Schools</u>
	<u>Number of Schools</u>	<u>Percentage of Schools</u>	<u>Number of Schools</u>	<u>Percentage of Schools</u>		
High Schools	24	71%	10	29%	1	35
Junior High Schools	3	21%	11	79%	0	14
Elementary Schools	3	33%	6	66%	2	11

Flat Fees for Athletics

In two of the 34 high schools offering programs, students participating in athletics were required to pay a flat fee. A high school in one of these districts charged students an annual \$15 flat fee for joining one or more athletic teams. The school board of that district recently rejected a proposed increase of the fee to \$25.

In the second district, a high school charged a flat fee of \$25. The fee system included a limit of \$50 per family. In addition to paying the \$25 fee, the students participating in athletics incurred additional out-of-pocket expenses for shoes, physical examinations, and insurance. The policy of charging fees was initiated in fiscal year 1978-79 when the district office asked each high school to contribute \$5,000 to support its athletic program. In response, the school we surveyed charged a fee of \$10. In the current fiscal year, the district asked for a donation of \$12,500; as a result, the school raised the fee to \$25. Two other schools in the district responded to the requests for contribution to the athletic program by carrying out fund-raising activities instead of by charging a flat fee.

#### Student Purchases for Athletics

At the high school level, mandatory student purchases occurred most frequently. In 24 high schools, students had to make specific purchases to participate in the athletic program. Although these purchases varied, they generally included at least some of these items: towels, shoes, jerseys, athletic supporters, insurance, physical examinations, and minor equipment. The total costs incurred varied by sport and by school. The highest estimated total cost we found for participation on a single team was \$84.

Purchases for athletics were required in three of the junior high schools and in three of the elementary schools. Junior high and elementary school purchases included shoes, personal clothing, and insurance.

#### Summer School Programs

Twenty-seven of the 30 districts we visited offered summer school programs. Some of these were mandated by law, and others were optional programs. Twenty-four programs were open to specific groups of students, such as special education students, whereas three were open to all students.

### Legal Background

School districts receiving funds under Chapter 282 of the Statutes of 1979 are mandated to provide the following summer school programs:

- Programs for substantially handicapped students;
- Programs for high school seniors needing courses required for graduation prior to September (summer of 1979 and 1980 only).

Further, they are required upon request to make facilities available, at cost, for the operation of migrant summer school programs.

In a recent opinion, the Legislative Counsel concluded that some procedures by which summer school courses are offered disallow the charging of fees. Specifically, if a district offers a summer school program, it cannot charge fees. Additionally, a "school district may not charge a fee for summer school programs offering basic education classes under the community service class program."

The Legislative Counsel opinion also cited a circumstance in which fees are allowed. Fees for summer school may be charged when a district leases its facilities to a nonsectarian private organization which provides summer school. For example, two schools we visited made their facilities available to municipal parks and recreation departments which, in turn, offered summer school programs with fees.

Table 6 illustrates the types of summer school programs being offered.

TABLE 6  
FEE-CHARGES FOR SUMMER SCHOOL PROGRAMS

<u>Type of Program Offered</u>	<u>Fee</u>	<u>Total</u>
District Offered:		
Mandated Programs Only	No	11
Mandated and Optional Courses for Limited Groups	No	9
Nonsectarian Organizations:*		
Mandated and Optional Courses for Limited Groups	Yes	1
Optional Programs for Limited Groups	No	3
Open Comprehensive Program	Yes	2
Community Services Program:		
Open Comprehensive Program	Yes	1
No Programs	---	<u>3</u>
Total		<u><u>30</u></u>

\* Schools within this category may also be offering free mandatory programs.

Fee-Charges for  
Summer School Programs

As the preceding table shows, we found that 20 districts were offering and administering their own summer school programs at no charge to students. All of the programs contained mandatory courses and nine of the programs also included optional courses. Six districts chose to provide summer schools sponsored by a nonsectarian organization. Two programs were designed for the children of migrant workers and were offered at no cost. However, two programs which were open to all students were fee-based. And one fee-based program featured a combination of mandated and optional courses. One district offered fee-based comprehensive summer school through a community services program. The remaining three districts offered no summer school programs.

Most of the districts we visited had offered extensive summer school programs in the past. Since the passage of Proposition 13, however, the scope of most programs had been narrowed.

TRANSPORTATION

The California Education Code permits school districts to:

- Charge a parent or guardian the amount limited to the statewide average nonsubsidized cost of providing such transportation to a pupil on a publicly owned or operated transit system (Section 39807.5);
- Charge students for optional field trips or excursions principally for transportation or for admission to an event (Section 35330).

Twenty-eight of the 30 districts we visited offered some form of free transportation to and from school for students who met certain district criteria. The two districts which did not offer transportation had identified groups which needed special provisions and had assisted in providing transportation for those groups.

In addition, students in five of the 30 districts may have to pay fees for curricular field trips. For extracurricular field trips, 25 of the 30 districts required student fees.

### Transportation To and From School

Although school districts are not mandated to provide transportation for students to travel to and from school, we found that in 23 school districts free bus transportation was provided to all regular students who met district standards. These standards are generally mileage criteria which varied among schools. For instance, students who lived outside of a radius of one mile from the school received free transportation. Students who were not eligible for free transportation were responsible for providing their own.

In five districts, free district-sponsored bus service was limited to specific categories of students--handicapped students or students enrolled in integrated programs which require special busing. Other students provided their own transportation.

In two instances, districts did not provide transportation for students. In one high school district, most students used the public transit system, much like commuters. That district has, however, provided transportation for 100 students who reside in a geographically remote area not conveniently served by public transit. The district chartered a bus for which students paid 50¢ per day--the cost of the municipal transit system. The district absorbed any costs not covered by the student fee.

The second district providing no bus service was an elementary school district. Most of these students walked to school. Parents of approximately 20 students in one part of the district expressed concern because their children had to cross a busy street. With some help from the district, those parents secured a chartered van to transport their children at a cost of \$12.50 per child per month.

### Curricular Field Trips

School boards in 28 of the 30 districts authorized curricular or educational field trips. In 23 of those districts, the transportation costs were assumed by the district. For the remaining five districts, the school group requesting the transportation had to reimburse the district its mileage cost for the trip. The student normally paid a proportionate share of the district mileage expense; of course, these costs varied according to the trip.



The only curricular field trip offered in several schools was Outdoor Education, a week-long camping experience which is offered in six elementary schools. In most cases, students incurred all costs, which ranged from \$20 to \$90.

#### Extracurricular Field Trips

Twenty-nine school districts provided transportation for extracurricular field trips. However, in 25 school districts the requesting group must have fully or partially reimbursed the mileage cost or have paid a minimum charge to the district. Transportation costs were normally charged for the following: roter bus trips, student council sponsored trips, overnight trips, and ski outings.

#### Differences in Student Fees and Charges Based on Poverty

As described earlier in this report, we categorized schools and districts as high or low poverty based on the percentage of students whose families are enrolled in Aid to Families with Dependent Children. Fifteen districts were high poverty; 15 were low poverty. However, not all schools that we visited reflected the district's overall level of poverty. As a result, there is an unequal number of high and low poverty schools--39 are low poverty and 21 are high poverty.

Table 7 below, which illustrates fee-charging activities in high and low poverty schools shows that a greater percentage of high poverty schools required students to purchase two curricular items, pencils and gym suits, whereas a greater percentage of low poverty schools required students to incur costs for optional items, curricular field trips, athletics, and special uniforms.

TABLE 7  
FEE CHARGING ACTIVITIES IN  
 HIGH AND LOW POVERTY SCHOOLS

	<u>Low Poverty Schools</u>			<u>High Poverty Schools</u>		
	<u>Number Charging Fee</u>	<u>Number With Relevant Programs</u>	<u>Percentage Charging Fee*</u>	<u>Number Charging Fee</u>	<u>Number With Relevant Programs</u>	<u>Percentage Charging Fee*</u>
Paper	8	39	21%	6	21	29%
Pencils	8	39	21%	8	21	38%
Vocational Education**	11	36	31%	6	18	33%
Lab Fees	1	36	3%	1	18	6%
Gym Suits	12	39	31%	11	21	52%
Gym Shoes	30	39	77%	17	21	81%
Field Trips	13	33	39%	1	19	5%
Music	2	36	6%	2	19	11%
Athletics	23	38	61%	7	19	37%
Club Dues	9	31	29%	8	18	44%
Special Uniforms	27	31	87%	13	18	72%
Student Body Cards	0	27	0%	0	18	0%

\* Percentage is based on number of low and high poverty schools offering relevant programs.

\*\* Refers to the number of schools that offer courses such as homemaking or wood shop (1) which do not supply the raw materials needed for basic instruction or (2) which charge a flat fee to take these courses.

### School Data

As shown in Table 7, we found no marked differences in fee-charging practices of high and low poverty schools in the following areas: paper, basic raw materials for vocational courses, lab fees, and music classes.

Notable differences did occur in some areas, however. A greater percentage of high poverty schools required students to purchase pencils and gym suits, both of which are mandatory curricular items. Additionally, a greater percentage of high poverty schools permitted their clubs to charge dues. In a greater percentage of low poverty schools, pupils were required to incur expenses for curricular field trips, athletics, and special uniforms, all of which are optional activities.

### District Data

Some of the district data relates to transportation and summer school programs. Two of the school districts which did not provide transportation to students were low poverty. Summer school programs were offered by 27 districts. Three low poverty districts were the only districts which offered comprehensive programs open to all students. Those districts charged fees to students who enrolled in the programs.

In 21 districts, summer school programs which are mandated were open to eligible students. One high poverty district offered the program through a nonsectarian organization for a fee. The other twenty districts, 12 of which were high poverty and eight of which were low poverty, charged no fee. Two districts offered programs for the children of migrant workers through nonsectarian organizations. One was low poverty and one was high poverty. Those programs were free to the students enrolled.

### Provisions for Students Who Could Not Pay Fees

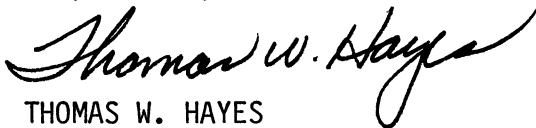
In over 90 percent of the schools we visited, administrators indicated there were provisions to assist students who could not pay necessary fees or purchase materials required for participation in courses or activities. Fees were waived or funds were provided by voluntary organizations such as the Parent Teacher Association or through specific fund-raising activities sponsored by the school or parents. Such provisions existed in all of the high poverty schools which charged fees; 35 of the 39 low poverty schools indicated they had provisions.

Members of the  
Joint Legislative Audit Committee  
December 7, 1979  
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CONCLUSION

In the opinion of the Legislative Counsel, educational fees are generally not permissible under the law. The results of our survey described in the preceding sections of this report indicate that the fee-charging activities of the schools we visited are not consistent with the law as interpreted by the Legislative Counsel. However, to determine the extent of each school's compliance with the law or their reasons for lack of apparent compliance with the law, more fieldwork and analysis would be required.

Respectfully submitted,



THOMAS W. HAYES  
Auditor General

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Attachments: Appendix A  
Appendix B  
Appendix C

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STANLEY M. LOURIMORE  
EDWARD F. NOWAK  
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# Legislative Counsel of California

BION M. GREGORY

Sacramento, California  
November 16, 1979

Mr. Thomas W. Hayes  
Office of Auditor General  
925 L Street, Suite 750  
Sacramento, CA 95814

## School Fees - #17036

Dear Mr. Hayes:

You have submitted a series of questions for our consideration. We have restated and answered them as follows.

### QUESTION NO. 1

You have submitted the following list of items for which a school district might charge a fee:

- (a) Paper and pencils for classes
- (b) Raw materials for homemaking, woodcraft, or art classes
- (c) Laboratory supplies
- (d) Gym suits and shoes
- (e) Musical instruments for music class
- (f) Musical instruments for extracurricular band
- (g) Special uniforms for extracurricular activities
- (h) Club dues
- (i) Extracurricular athletic team.

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PAUL ANTILLA  
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JAMES L. ASHFORD  
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DANIEL A. WEITZMAN  
THOMAS D. WHELAN  
JIMMIE WING  
CHRISTOPHER ZIRKLE  
DEPUTIES

In this regard, you have asked, for each item listed, whether the governing board or a school may require a pupil to pay a charge, fee, or deposit.

OPINION NO. 1

The governing board of a school district, as discussed in the analysis, may not require a pupil to pay a charge, fee, or deposit for any of the items listed by your request. In addition, requiring pupils to purchase any of these items would constitute a charge within the meaning of Section 350 of the California Administrative Code.

ANALYSIS NO. 1

Section 5 of Article IX of the California Constitution requires the Legislature to provide for a system of common schools. Section 5 reads as follows:

"Sec. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (Emphasis added.)

There is some existing California authority which indicates that the term "common schools" does not include high schools (Los Angeles County v. Kirk, 148 Cal. 385, 391). However, there has been no clear holding on the point. In light of the long history of free public high schools in this state, the state support of public high schools on the same basis of support given to public elementary schools (Art. IX, Sec. 6, Cal. Const.) and the lack of strong legal authority on point, we do not believe that it can safely be stated that the California courts would uphold the imposition of a direct or indirect fee or charge upon public high school pupils as a condition upon enrollment in school or a course of instruction. We note that courts in other states have treated high schools as being included in common schools (Lynch v. Commissioner of Education (Mass.), 56 N.E. 2d 896; People v. Moore (Ill.), 88 N.E. 979); Paulson v. Minidoka County School District No. 331 (Idaho), 463 P. 2d 935, 937; cf. Carpio v. Tuscon High School Dist. No. 1 of Puma Cty. (Ariz.), 417 P. 2d 1268, 2191).

In addition, it has long been held by the California Supreme Court, in regard to elementary schools, that once the Legislature establishes a system of common schools pursuant to the constitutional mandate the youth of the state are entitled to be educated at public expense (Ward v. Flood, 48 Cal. 36, 51).

In this connection, under the authority of Section 5 of Article IX of the California Constitution and its authority to adopt rules and regulations for the government of the various public schools (Sec. 33031), the State Board of Education has promulgated Section 350 of Title 5 of the California Administrative Code. This section has declared it the policy of the state that "[a] pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."

Section 35160 does authorize the governing board to act in any manner which is not in conflict with or inconsistent with any law. However, in this regard, it is established that where the Legislature, by the enactment of statutes, has declared its policy and purpose and prescribed appropriate standards, it may confer on administrative agencies the power to promulgate regulations. When validly exercising the authority so conferred, an administrative agency is said to be merely "filling up the details," following the standards embodied in the statutes and implementing them to promote their purposes and to carry them into effect. Such administrative regulations have the force and effect of law. (See California Employment Commission v. Butte County Rice Growers Assoc., 25 Cal. 2d 624; First Industrial Loan Co. v. Daugherty, 26 Cal. 2d 545; California Employment Commission v. Kovacevich, 27 Cal. 2d 546; Knudsen Creamery Co. v. Brock, 37 Cal. 2d 485; Letora v. Riley, 6 Cal. 2d 171; Alta Dena Dairy v. County of San Diego, 271 Cal. App. 2d 66.)

Thus, valid regulations of the State Board of Education represent administrative refinement of the statutes being implemented, and in our opinion are binding upon school districts to the same extent as the statutes themselves, notwithstanding Section 35160.

Further, the Education Code provides that no school official shall require any pupil, except pupils in classes for adults, to purchase any instructional materials for the pupils' use in the school (Sec. 60070, Ed. C.\*). Section 40011 specifically requires governing boards to furnish necessary supplies for the use of pupils in the schools. This section reads, as follows:

"40011. Writing and drawing paper, pens, inks, blackboards, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing boards of the school districts."

There is no statutory or regulatory authority contained in either the Education Code or Title 5 of the California Administrative Code which authorizes the governing board of a high school to require pupils to pay a fee in order to participate in a course offered as part of the regular school program.

Specifically, with regard to your request, there is no statutory or regulatory authority contained in either the Education Code or in rules prescribed by the State Board of Education in Title 5 of the California Administrative Code which authorizes the governing board of a high school to charge fees for items (a) through (e).

Additionally, we think a requirement that pupils purchase any of the items listed (a) through (e) in order to participate in a required course of study is tantamount to a required charge, within the meaning of Section 350 of Title 5 of the California Administrative Code, and may be in derogation of Section 5 of Article IX of the California Constitution requiring pupils to be educated at public expense.

Items (f) through (i) listed in your question relate to extracurricular activities outside the regular course requirements. There is no authorization either in the Education Code regulation promulgated thereunder for the imposition of these fees and deposits. Fees and deposits imposed for items (f) through (i), we think, would not be prohibited by Section 5 of Article IX of the California Constitution because they do not concern a regular course of study. Nevertheless, Section 350 of the California Administrative Code explicitly precludes any charge not authorized

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\* Hereinafter all section references refer to the Education Code, unless otherwise specified.



by law. Thus, if a school district decides to offer extracurricular activities, there is no authority for the district to charge pupils for these items.

Hence, it is our opinion that Section 350 of the California Administrative Code precludes the governing board or any school from imposing a fee or deposit for the items (f) through (i) in your question. Moreover, requiring pupils to purchase musical instruments (Item (f)), special uniforms (Item (g)), or athletic equipment (Item (i)) for extracurricular programs would constitute a charge within the meaning of Section 350 of the California Administrative Code.

We note, parenthetically, that the Department of Education has interpreted Section 350 of Title 5 of the California Administrative Code to preclude any charge, fee, or deposit for an extracurricular activity or for items necessary in participation therein unless specifically authorized by law. The contemporaneous construction given to a statute by the officials charged with its administration is entitled to great weight and will be accorded great respect by the courts and followed if not clearly erroneous (see, e.g., Norioian v. Department of Administration, 11 Cal. App. 3d 651, 655; Matthews v. Civil Service Commission, 158 Cal. App. 2d 169, 174).

To summarize, no charge, fee, or deposit may be required by a school district for the items listed in your question. As to items (f) through (i), a school district is not required to provide extracurricular programs. However, once the programs are provided, the district may not impose a fee, charge, or deposit for the programs or equipment and materials used. We further conclude, that to require pupils to purchase any of the items listed would be tantamount to a required charge within the meaning of Section 350 of Title 5 of the California Administrative Code.

#### QUESTION NO. 2

You have asked whether a school district can charge pupils for mandatory and extracurricular field trips.

OPINION NO. 2

A school district may not charge its pupils who participate in a mandatory field trip. However, if the field trip is extracurricular, then a fee or charge may be imposed, but no pupil can be denied participation in the field trip because he or she lacks sufficient funds.

ANALYSIS NO. 2

As we noted in our Analysis No. 1, Section 5 of Article IX of the California Constitution requires a system of free common schools. Moreover, Section 350 of Title 5 of the California Administrative Code precludes a public school from requiring any fee, deposit, or other charge not authorized by law.

You have asked first whether a school district can charge a fee for field trips required for a pupil's successful completion of a required course of study; and, secondly, whether a school district can charge a fee for field trips deemed extracurricular.

Section 35330 specifically authorizes the governing board of any school district to conduct field trips or excursions in connection with courses of study or school-related social, educational, cultural, athletic, or school band activities for pupils enrolled in elementary or secondary schools to and from places in the state, any other state, the District of Columbia, or a foreign country (see subd. (a), Sec. 35330).

School districts conducting authorized field trips and excursions are permitted to collect state apportionments, for not to exceed 10 school days, for pupils in attendance (Sec. 35330).

Section 35330 contains language specifying that a pupil who is a part of a group authorized to take a field trip or excursion shall not be excluded therefrom because of lack of sufficient funds, and directs school district governing boards to coordinate efforts of community service groups to supply funds for pupils in need of them.

With regard to mandatory field trips wherein pupils' participation is required to successfully complete a required course of study, no fee, charge or deposit may be required by a school district. In practice, these field trips are merely an extension of the actual classroom and required course work. Normally, participation on a field trip enables pupils to experience something taught and discussed in the school classroom. A pupil's grade or successful completion in a required course might depend upon his or her participation in the field trip.

It is our opinion that such field trips fall within the penumbra of Section 5 of Article IX of the California Constitution and the strictures of Section 350 of the California Administrative Code. Section 5 contemplates a free system of education encompassing a required course of study. Pupils required to participate in a field trip are merely carrying out one requirement of the particular course for which the field trip is offered. Thus, if a field trip is required, the pupils must be provided the field trip at public expense.

As to field trips deemed "extracurricular" we must look to Section 35330 for some authority authorizing school districts to impose a charge or fee.

Specifically we note a particular provision in Section 35330; it reads as follows:

"35330. \* \* \*

"No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for pupils in need of them.

"No group shall be authorized to take a field trip or excursion authorized by this section if any pupil who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

\* \* \*"

As we read these provisions, by implication some type of charge is contemplated. Otherwise, no pupil would ever be prevented from making a field trip because of insufficient funds. Because imposition of a fee or charge is precluded for a mandatory field trip, we think these provisions must relate to extracurricular field trips. Hence, it is our opinion that Section 35330 authorizes school districts to charge a fee for field trips which are not part of the pupils' regular course of study.

In this regard, we note that the various parts of a statutory enactment be harmonized by considering the particular clause in the context of the statutory framework as a whole (Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222, 230-231). This authorization, therefore, meets the requirement of Section 350 of the California Administrative Code precluding a governing board from imposing a fee or charge without authorization.

To summarize, whether a charge or fee may be imposed on students by a school district stems from the nature of the field trip. If participation is mandatory as part of a regular course of study, then no charge may be imposed. Conversely, if the field trip is of an extracurricular nature, then a fee or charge may be imposed. Whether a field trip is mandatory as an outgrowth of a required course or extracurricular depends on the particular circumstances.

We, therefore, conclude that no charge or fee can be imposed on pupils who participate in a mandatory field trip. However, a fee or charge can be imposed on pupils who participate in an extracurricular field trip.

### QUESTION NO. 3

You have asked what transportation charges may be legally imposed on public school pupils in California.

### OPINION NO. 3

A school district which provides for the transportation of pupils to and from school may require the parents or guardians of the pupils to pay a portion of the cost of such transportation. The amount charged cannot

exceed the statewide average nonsubsidized cost of providing the same transportation on a publicly owned or operated transit system as determined by the Superintendent of Public Instruction.

ANALYSIS NO. 3

The governing board of any school district may provide for the transportation of pupils to and from school (Sec. 39800). Generally, however, a school district has no statutory duty to provide transportation for pupils to and from school, since the basic statutory provision authorizing school districts to provide transportation for pupils to and from school, Section 39800, is worded in permissive terms (see Girard v. Monrovia City School District, 121 Cal. App. 2d 737, 743; cf. Manjares v. Newton, 64 Cal. 2d 365, re school district's abuse of discretion in denying transportation to pupils).

The governing board may purchase or rent and provide for the upkeep of vehicles, or the board may contract and pay for the transportation of pupils to and from school by common carrier (Sec. 39800). Additionally, the governing board may contract with a municipally owned transit system or contract with and pay private parties for transporting pupils to and from school. Provision is made for the transportation in school buses of preschool or nursery school pupils.

Section 39807.5\*\* authorizes school district governing boards to require parents of pupils to pay a portion of the transportation costs of transporting pupils to and from school. The amount of such costs is to be determined by the governing board.

The amount that may be charged by the board must not exceed the "statewide average nonsubsidized cost" of providing the same transportation to a pupil in a publicly owned or operated transit system. The amount must be determined by the Superintendent of Public Instruction in cooperation with the Department of Transportation. "Nonsubsidized cost" is defined for these purposes as actual operating costs less federal subventions (Sec. 39807.5).

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\*\* Section 39807.5 was amended by Chapter 776 of the Statutes of 1979. Chapter 776 is an urgency statute which took effect September 19, 1979. It will remain in effect until July 1, 1982, unless a later enacted statute which is chaptered or becomes effective before July 1, 1982, deletes or extends such date.

Provision is made to exempt from transportation charges to pupils of indigent parents or guardians. Further, no charge may be made for the transportation of handicapped children.

Therefore, we conclude that a governing board is authorized to charge pupils a fee for the transportation of pupils to and from school. Although the board is authorized to set the amount of such fee, the amount so established cannot exceed the statewide average nonsubsidized costs, as defined.

QUESTION NO. 4

You have asked whether a school district may require pupils to purchase a student body card.

OPINION NO. 4

A school district may not require a pupil to purchase a student body card.

ANALYSIS NO. 4

As discussed in Analysis No. 1, a school district can require pupils to pay only those fees specifically authorized by law (see Section 350 of Title 5 of the California Administrative Code).

Article 2 (commencing with Section 48930) of Chapter 6 of Part 27 contains general provisions authorizing students to organize student body associations within the public schools. The governing board may authorize such organization to maintain fund-raising activities (Sec. 48932). Provision is made for the expenditure of student-raised funds (Sec. 48933). Included among these expenditures for student organizations established in schools, kindergarten and grades one to six, is authorization to "finance activities for non-instructional periods or to augment or to enrich the programs provided by the district" (Sec. 48935).

Based on our reading of the above provisions, it is our opinion that student body cards could be issued by a student body organization and fees obtained thereby could be deposited for the organization's account. Such fee, we think, would be in the nature of a fund-raising activity of the organization.

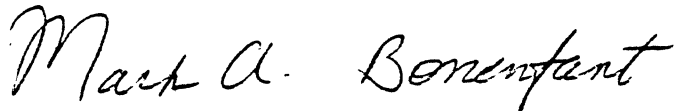
Mr. Thomas W. Hayes - p. 11 - #17036

However, a school district has no specific authorization to charge pupils for a student body card and to retain the fees therefrom. In other words, if a school district, rather than the student organization, requires a pupil to have a student body card, the district cannot impose a fee for the student body card.

Based on the foregoing, we conclude that a school district cannot require its pupils to purchase a student body card.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

A handwritten signature in cursive script that reads "Mark A. Bonenfant".

By  
Mark A. Bonenfant  
Deputy Legislative Counsel

MAB:sms

cc: Assemblyman Richard Robinson

Anaheim School District

Anaheim High School  
Brookhurst Junior High School

Antioch School District

Antioch High School  
Antioch Junior High School

Buckeye Union Elementary School District

Buckeye Elementary School  
William Brooks Elementary School

Campbell Union High School District

Camden High School  
Westmont High School

Centinela Valley Union High School District

Lawndale High School  
Hawthorne High School

Chico Unified School District

Bidwell Junior High School  
Chico Senior High School

Conejo Valley Unified School District

Thousand Oaks High School  
Sequoia Intermediate School

El Dorado Union High School District

El Dorado High School  
Ponderosa High School

El Monte Union High School District

Rosemead High School  
Arroyo High School

Grant Joint Union High School District

Grant Joint Union High School  
Rio Linda High School



Hanford Elementary School District

Monroe Elementary School  
Wilson Junior High School

Kentfield Elementary School District

Adaline K. Kent School  
Greenbrae Elementary School

Kerman Union High School District

Kerman High School  
Nova High School

Lake Tahoe Unified School District

South Tahoe Intermediate School  
South Tahoe High School

Live Oak Unified School District

Live Oak Elementary School  
Live Oak High School

Ocean View Elementary School District--Huntington Beach

Harbour View Elementary School  
Mesa View Elementary School

Ocean View Elementary School District--Oxnard

Laguna Vista Elementary School  
Tierra Vista Elementary School

Orange Unified School District

Cerro Villa Junior High School  
Villa Park High School

Palmdale Elementary School District

Tumbleweed Elementary School  
Roy R. Maryott Elementary School

Patterson Joint Unified School District

Patterson High School  
Patterson Junior High School

Pierce Joint Unified School District

Arbuckle Elementary School  
Pierce High School

Placer Union High School District

Placer High School  
Del Oro High School

Porterville Union High School District

Porterville High School  
Monache High School

Richmond Unified School District

Adams Junior High School  
De Anza Senior High School

San Diego City Unified School District

Dana Junior High School  
Hoover Senior High School

Santa Ana Unified School District

Santa Ana High School  
Spurgeon Intermediate School

Santa Barbara City High School District

Dos Pueblos Senior High School  
Santa Barbara Senior High School

Santa Clara Unified School District

Curtis Intermediate School  
Marian A. Peterson High School

Sweetwater Union High School District

Hilltop Senior High School  
Bonita Vista High School

Tamalpais Union High School District

Tamalpais High School  
Redwood High School

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RAY H. WHITAKER  
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STANLEY M. LOURIMORE  
EDWARD F. NOWAK  
EDWARD K. PURCELL

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Sacramento, California  
August 16, 1979

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Honorable Leroy F. Greene  
Assembly Chamber

Fees for Summer School - #13773

Dear Mr. Greene:

## QUESTION NO. 1

You have asked whether a school district may charge a fee for summer school classes.

## OPINION NO. 1

A school district may not charge a fee for summer school classes.

## ANALYSIS NO. 1

We note at the outset that Section 5 of Article IX of the California Constitution requires the Legislature to provide for a system of common schools. Section 5 reads as follows:

"Sec. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (Emphasis added.)

- We read this to mean that all common schools established by the Legislature shall be free. Common schools must be maintained at least six months a year. Arguably, summer session extends beyond the six months' requirement. Nevertheless, we think that whether a common school is open for six months or year round, the school must be free from fees or tuition.

We further recognize that Section 35160 of the Education Code\* authorizes the governing board to act in any manner not in conflict with or inconsistent with, or pre-empted by, any law. However, Section 350 of Title 5 of the California Administrative Code states that "a pupil enrolled in a [public] school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law." We find no statutory or regulatory authority contained in either the Education Code or Title 5 of the Administrative Code which specifically, or even impliedly, authorizes school districts to charge tuition for summer school classes. Hence, a district which charged a fee for summer school would be in conflict with the regulation promulgated in Section 350 of Title 5 of the California Administrative Code.

Additionally, the Legislature has clearly pre-empted the area of fees and tuition. The Legislature has provided for fees and tuition throughout the Education Code. For example, the Legislature has authorized fees for adults (Sec. 52612), apprentice nonresidents (Sec. 48053), high school equivalency certificate (Sec. 51421), and transportation (Secs. 39801.5, 39804). Thus, the Legislature, when it has deemed it appropriate, has authorized the imposition of fees by school districts.

Finally, in many districts parents could afford to pay a fee for summer school courses, yet in many others the fee would be prohibitive. Similarly situated pupils would be denied equal protection of the law because of wealth. In Serrano v. Priest, 5 Cal. 3d 584 and 18 Cal. 3d 728, it was held that

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\* All references to code sections are to sections of the Education Code, unless otherwise noted.

when similarly situated pupils are denied an equal educational opportunity because of wealth, such pupils' constitutional rights are violated. Additionally, assuming all districts charged fees for summer school, some districts, because of the wealth of its inhabitants, could charge higher fees and provide higher quality programs and instruction. We think this would violate the very holding of Serrano v. Priest, supra.

For the foregoing reasons, we conclude that a school district may not charge a fee for summer school.

QUESTION NO. 2

You have asked whether a school district may charge a fee for summer school programs offering basic education classes under the community service class program.

OPINION NO. 2

A school district may not charge a fee for summer school programs offering basic education classes under the community service class program.

ANALYSIS NO. 2

Article 10 (commencing with Section 51810) of Chapter 5 of Part 28\*\* authorizes governing boards of school districts to conduct community service classes. Specifically, Section 51810 authorizes the governing board of any school district maintaining secondary schools to establish and maintain community service classes, without the approval of the State Department of Education. These classes are "designed to provide instruction and contribute to the physical, mental, moral, economic or civic development of the individuals or groups enrolled therein" (Sec. 51810).

Community service classes must be open for the admission of all adults (Sec. 51811). Minors may be admitted if, in the judgment of the governing board, the minor will profit from such classes (Sec. 51811). Governing boards may charge student fees for community service classes not to exceed the cost of maintaining such classes (Sec. 51815). However, no apportionment from state funds may be made to establish or maintain community service classes (Sec. 51844).

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\*\* Hereinafter referred to as Article 10.

- The question posed concerns whether a school district may, under the provisions of Article 10, provide a summer school program for its pupils in basic education subject areas and charge fees therefore. We begin our discussion with salient rules of statutory construction.

In construing statutes, the intent of the Legislature must be ascertained, if at all possible, and the statute construed in accordance with such intent (Tripp v. Swoap, 17 Cal. 3d 671, 679; West Pico Furniture Co. v. Pacific Finance Loans, 2 Cal. 3d 594, 607-608). Additionally, "[a] statute ... must be read and construed as a whole in harmony with other statutes relating to the same general statute" (In re Marquez, 3 Cal. 2d 625, 628), and the language of the statute should be construed to effect, rather than defeat, its evident objective and purpose (Brodsky v. Seaboard Realty Co., 206 Cal. App. 2d 504, 516).

Courts presume that the Legislature does not intend to enact legislation in contravention of existing public policy (Interinsurance Exchange v. Ohio Cas. Ins. Co., 58 Cal. 2d 142, 152). Moreover, courts interpret exceptions to general propositions of law narrowly (see e.g., In re Goddard, 24 Cal. App. 2d 132; Hurst v. San Francisco, 33 Cal. 2d 298).

As discussed in Analysis No. 1, Section 5 of Article IV of the California Constitution expresses the general policy of the state with regard to education. Section 5 of Article IV requires the Legislature to establish a system of free common schools. However, the Legislature has established an exception to this constitutional mandate by authorizing districts to provide community service classes pursuant to Article 10.

After a reading of Article 10, we think the purpose for community service classes is to provide classes in specialized areas for adults and for those minors who, in the judgment of the governing board, would be able to profit from such classes. Indeed, Section 51811 states that all community service classes must be open for all adults; however, the section limits admission only to those minors who have approval from the governing board.

Reading Section 51814 and Section 51815 together, we ascertain that the Legislature intended to authorize something different from the regular school programs. As these sections provide, community service classes are not to receive apportionments from state school funds but are to receive support from the general fund of the district, or fees charged by the district for such classes. It is the general policy of this state to fund all basic education through the 12th grade from state school funds (see Part 24 (commencing with Section 41000)).

The governing board of a school district which operates a summer school program pursuant to the community service class provisions, in charging a fee therefor, would seem to contravene the intent of Article 10. Section 51811 states a general rule that all adults shall be admitted to community service classes and permits the admission of minors as an exception to that rule. A summer school program for pupils in kindergarten and grades 1 to 12 would result in the exception of Section 51811 overcoming the general rule.

Section 51810 further indicates the Legislature's intent. Section 51810 delineates types of classes offered under a community service class program. Classes in music, drama, art, handicrafts, science, literature, nature study, nature contacting, aquatic sports, and athletics are included. Continuing, Section 51810 provides such instruction intended to contribute to the physical, mental, moral, economic, or civil development of the individuals or groups enrolled therein. We read this to mean classes offered pursuant to a community service program are in the nature of self improvement courses, and supplementary to the basic education programs. They are designed principally for adults, and secondarily for those minors who in the judgment of the governing board may profit therefrom.

Consequently, we conclude that a full summer school program offering basic education classes does not constitute community service classes. Thus, the governing board of a school district cannot, under Article 10, charge fees for summer school programs offering basic education classes.

QUESTION NO. 3

You have asked whether a school district may lease its facilities to a nonsectarian private organization which provides summer school for a fee.

OPINION NO. 3

A school district may lease its facilities to a nonsectarian private organization which provides summer school for a fee, if specified procedures are followed by the governing board of the school district and the district receives adequate consideration for such use.

ANALYSIS NO. 3

Article 4 (commencing with Section 39360) of Chapter 3 of Part 23 contains the salient provisions regarding the sale and lease of school district property. The Legislature has declared as its intent that school districts be authorized, under specified procedures, to make vacant classrooms in operating schools available for rent or lease to, among others, professional agencies, and commercial and noncommercial firms (Sec. 39384). Accordingly, school districts have authority to sell or lease any real property belonging to the school district which is not or will not be needed by the district for school classroom buildings (Sec. 39360).

Governing boards must follow prescribed procedures before entering into a lease. Section 39366 requires the governing board, in a regular open meeting, by a two-thirds vote of all its members, to adopt a resolution declaring its intent to lease its property. The resolution must identify the property to be leased and specify the minimum rental and the terms upon which it will be leased. Finally, the resolution must set forth a time, not less than three weeks, for a public meeting and submission and consideration of sealed proposals.

At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals must be opened, examined, and declared by the board (Sec. 39371). Before accepting a written proposal, the board must call for oral bids. An oral bid which exceeds 5 percent of the highest written proposal, after deducting the commission to be paid a licensed broker in connection therewith, must be finally accepted (Sec. 39372). The written proposal which is the highest, after deducting therefrom the commission to be paid a licensed real estate broker, shall be accepted, unless a higher oral bid is accepted or the board rejects all bids (Sec. 39371).



We note, in passing, that the governing board of any school district may, without complying with any of the provisions of Article 4, lease buildings, grounds, or space thereon, together with any personal property located thereon for a period not to exceed five separate or consecutive calendar days or portions thereof in each fiscal year (Sec. 39379).

Finally, we must address a potential constitutional problem. Section 6 of Article XVI of the California Constitution generally prohibits the gift of public funds. Such prohibition does not apply when adequate consideration is given for the property or a valid public purpose of the donor agency is served by the transfer (Alameda County v. Janssen, 16 Cal. 2d 276).

More specifically to the question presented, a school district may lease its facilities to a nonsectarian private concern if the foregoing provisions of Article 4 are followed. However, the school district must, in addition, receive adequate consideration by the terms of the lease. Otherwise, the school district will have made a gift of public funds in violation of Section 6 of Article XVI.

Thus, we conclude that a school district may validly lease its facilities to a nonsectarian private organization which provides summer school for a fee, if the specified procedures are followed and the district receives adequate consideration for such use.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

*Mark A. Bonenfant*

By  
Mark A. Bonenfant  
Deputy Legislative Counsel

MAB:nmw