



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>November 9, 2018</p>	<p>No. I18-012 (R18-017)</p> <p>Recent Legislation Concerning School Procurement Practices</p>
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To: William J. Sims III
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Question Presented

Does Arizona Revised Statutes (“A.R.S.”) § 15-213(N) prohibit a school district employee who participates in procurement decisions from auctioning off an event for attendees—who may include vendors who contract with the district—where all monies collected benefit an independent foundation that supports the district?

Summary Answer

No. Arizona Revised Statutes § 15-213 does not prohibit the event described. Arizona Revised Statutes § 15-213(N) imposes criminal penalties on school district employees involved in procurement who receive a “personal gift or benefit” from “a person or vendor that has secured or has taken steps to secure a contract, purchase, payment, claim or financial transaction with the school district.” Donations to an independent foundation that supports the school

district do not fall within the definition of “personal gift or benefit.” Thus, they do not violate the prohibition in A.R.S. § 15-213(N).

Background

Pursuant to A.R.S. § 15-253(B), an attorney for the Chandler Unified School District (the “District”) submitted an opinion he provided to the District’s Superintendent for review. Arizona Revised Statutes § 15-253(B) requires the Attorney General to “concur, revise or decline to review” opinions of county attorneys relating to school matters.¹ This Opinion revises the opinion submitted by the District’s attorney.

For the past seventeen years, the District’s Superintendent has hosted a dinner to support the Chandler Education Foundation (the “Foundation”), a non-profit entity with a mission “to provide community support for excellence in education and promote lifelong learning and responsible citizenship for Chandler Unified School District students.”² A person may secure an invitation to the dinner by submitting a bid, the amount of which is donated to the Foundation. Any member of the public—including past and present vendors of the District—may bid for an invitation to the dinner. All funds paid to attend the dinner are donated to the Foundation, and no portion is deducted to pay the dinner expenses; the District’s Superintendent personally covers those costs.

Analysis

In 2018, the Legislature amended A.R.S. § 15-213 by, *inter alia*, adding subsection N, which provides:

¹ The term “county attorney” in A.R.S. § 15-253(B) includes elected county attorneys as well as attorneys who represent school districts with the consent of the county attorney. Ariz. Att’y Gen. Op. I88-052, at 2 (Substitute Opinion) (1988). The opinion revised herein falls in the latter category.

² Chandler Education Foundation, *Who We Are: Mission & History*, <https://www.chandleredfoundation.org/who-we-are/mission.html>.

A person who supervises or participates in contracts, purchases, payments, claims or other financial transactions, or a person who supervises or participates in the planning, recommending, selecting or contracting for materials, services, goods, construction, or construction services of a school district or school purchasing cooperative is guilty of a class 6 felony if the person solicits, accepts or agrees to accept any personal gift or benefit with a value of three hundred dollars or more from a person or vendor that has secured or has taken steps to secure a contract, purchase, payment, claim or financial transaction with the school district or school purchasing cooperative. Soliciting, accepting or agreeing to accept any personal gift or benefit with a value of less than three hundred dollars is a class 1 misdemeanor. A gift or benefit does not include an item of nominal value such as a greeting card, t-shirt, mug or pen.

A.R.S. § 15-213(N). Under this section, if donations to the Foundation to attend the Superintendent's dinner are a "personal gift or benefit" to the Superintendent, they are prohibited. *Id.* A "gift or benefit" is "a payment, distribution, expenditure, advance, deposit or donation of monies, any intangible personal property or any kind of tangible personal or real property." A.R.S. § 15-213(S)(1). Accordingly, a donation to the Foundation meets the definition of "gift or benefit." However, such a donation is only prohibited if it is "personal."³

"Personal" is defined as "of or relating to a particular person." Webster's Third New International Dictionary 1686 (1993). The donation to the Foundation described here is not for or relating to any particular person. As such, it is not a "personal gift or benefit" barred by A.R.S. § 15-213(N).

³ The opinion submitted by the District's attorney discussed whether the term "personal" in A.R.S. § 15-213(N) modified both "gift" and "benefit," and determined that it did because "gift or benefit" is a single defined term that did not call for the application of the nearest-reasonable-referent canon of construction. One could also apply the series-qualifier canon to reach the same result. The series-qualifier canon provides that "[w]hen there is a straightforward parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 150 (Thomson/West 2012).

Conclusion

Arizona Revised Statutes § 15-213(N) does not bar the District's Superintendent, or any other District employee who participates in contracting for materials, goods, services, or construction, from hosting a dinner attended by vendors of the district when the vendors obtain an invitation to the dinner by making donations to the Foundation.

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