

# Sounding Board

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*Promoting Quality Charter School Governance*

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## Use of Public Funds

Charter schools in Minnesota, like all other publicly-funded organizations, operate within the parameters of Minnesota statutes, rules and regulations from the Minnesota Department of Education and the federal government, and their own bylaws. This includes how they receive and are allowed to use taxpayer provided money to operate their schools. There are specific allowable and prohibitive uses of federal funds they receive. In other words, the funds that charter schools receive from public sources can only be used for specific purposes and in specified ways. While there is some flexibility in the use of public funds in charter schools, even that flexibility has limitations. Fortunately, the allowable and prohibited uses outlined in statute and regulation ensure charter schools provide quality educational services to their school communities while also preventing abuse and misuse of public funds.

The below discussion pertains to the actual uses of public funds and not to the process by which public funds are expended (e.g. purchase orders, invoice reconciliation, check registers and payments, etc.).

In Minnesota, the guiding principle or legal requirement for the use of public funds, including in charter schools, is that the funds must be used for a public purpose and not for the primary benefit of an individual or a group of individuals. Key in this concept are the phrases “public purpose” and “primary benefit.”



In the vernacular “public purpose” seems self-explanatory; however, some interpretation or explanation of that phrase may be helpful. Generally, it means that any public funds provided to charter schools must further the purpose of the charter school’s mission and vision and must support the school’s statutory purposes as expressed in its contract with its authorizer. For example, per MN §124E.01 the primary purpose (and therefore the public purpose) of charter schools is to improve all pupil learning and all student achievement. Thus, any expenditures directly or reasonably used toward that end would be considered expenditures to serve a “public purpose.” Within that public purpose would be the expenditure of funds for school staff salaries, facility, utilities and other operational costs, instructional materials, etc.

Obviously, there are many appropriate expenditures made by charter schools that contribute to their successful operation, and all of the above examples would meet a standard of serving a “public purpose.”

The second pertinent concept in the use of public funds is that of “primary benefit.” Again, in the vernacular, this means that while an expenditure of public funds can be of benefit to an individual person or a group of people, the expenditure must, as its “primary benefit,” further the “public purpose” of the organization. So, while salaries paid to staff members in accordance with school policies do benefit individuals, their primary purpose is to allow the school to operate. This means that any charter school expenditure that either does not serve a “public purpose” and / or does not have “public purpose” as the “primary benefit” of the expenditure is inappropriate.

What are the practical implications of these concepts? When school leaders and school boards develop and adopt annual budgets, these two concepts should guide any expenditures that seem to be different than the traditional expenditures used as examples above. This situation commonly arises when a board decides it wishes to pay bonuses to staff members. Often staff members go “above and beyond” in completing their tasks, such as during a pandemic or distance learning. School boards often want to reward staff members who do so, but how does paying bonuses square with meeting the two tests of “public purpose” and “primary benefit”?



The answer to that question depends on how the bonuses are approved and the parameters for their award. Following are two examples of awarding financial compensation to staff members the board wishes to recognize. The first example does not meet the standards of “public purpose” and “primary benefit” and the second example does meet those standards.

**Example 1.** A board member makes a motion at a regular board meeting in January to pay a \$500 bonus to some teachers in the school because of all of the “extra work” they did recently, under very stressful conditions. Should the board approve this expenditure?

**Analysis.** The first question is, what is the “public purpose” of this expenditure? Teachers are already paid by the school for their professional services and it is reasonable to expect that at times each person will need to do some “extra work” in order to be successful in their professional work. Their amount of pay for those services is specified in each teacher’s employment agreement with the school.

The second question is, what is the “primary benefit” of the expenditure? Is the primary benefit for the school or for the individuals who receive the bonus? The bonus may apply to some individuals and not others, and is not part of a general increase in pay contained in each teacher’s employment agreement (which the school could reasonably argue provides the school with the “primary benefit”). So, the primary benefit of these bonuses would be for the teachers who receive them, and not for the benefit of the school.

In addition, this expenditure, depending on the number of teachers who receive it, could have a negative impact on the school’s annual operating budget and / or the school fund balance. Further, it raises many questions for which there are often no good answers. Which teachers receive the bonus? Everyone? Some? How are they selected? And will this be an ongoing expectation every time teachers do “extra work?” How was the \$500 amount determined? Does this create an expectation that such bonuses will continue in the future?

**Example 2.** In spring, prior to the adoption of its following year's annual budget, a charter school board deliberates the adoption of a policy that could provide financial compensation for staff members in the amount of up to \$500 for optional work identified by the board as important to accelerating the school's success and that is an expectation beyond the normal performance expectations in each teacher's employment agreement (think of an after school tutoring program for example).

**Analysis.** The policy identifies the specific teaching positions that are eligible for the extra compensation, the specific work that is to be completed, the timeline for when the work needed to be completed, how much of the payout would be earned for each level of performance, the payout date, and other pertinent information. No staff member would be required to participate in this activity and any who started in the activity could discontinue participation at any time and receive a partial payout as determined by the amount of work completed by the school leader. Further, the board would consider the financial ramification of this policy in terms of its overall financial position and the relative importance of the work to be accomplished. In other words, "Can we afford it?" and "Is there a more effective way to use these funds?"

**Discussion.** During very challenging times such as during a pandemic or distance learning, it is tempting for charter school boards to want to compensate some or all employees for what likely are the extra efforts some or all staff members make as a result of those challenges. However, providing such compensation without having thought through all of the ramifications in advance can cause both immediate and longer-term problems for the board.

In summary, in the first example above, the board is considering a bonus for teachers in January which is only half way through the school year so questions arise such as "Will there be a second bonus at the end of the year and what about next year if the current conditions continue?" Also, what about other staff members in non-teaching positions, such as custodians, paraprofessionals, admin staff, and bus drivers? Do they get the bonus? If so, is it in the same amount? Does everyone deserve the bonus or just some people? Who decides and what criteria do they use to decide? Is the amount a reasonable amount? How is that determined? If a board wishes to provide the opportunity for teachers or other staff members to qualify for extra compensation that meets the dual test of having a "public purpose" and the school receiving the "primary benefit," it should do so deliberately and thoughtfully, and not on the spur of the moment, even if the challenging times through which the school community is passing is an emotional one.



**Example 3.** Similar to the above examples but somewhat different is the situation where a charter school board is discussing an idea put forward by one of its members that would provide a cash payout to the school's leader on an annual basis that would be in addition to the regular salary specified in the school leader's employment agreement with the school. The board member proposing the payment refers to it as a "bonus" or "performance pay."

**Analysis.** This proposed payment comes under even more scrutiny as to its "public purpose" and "primary benefit" than the above examples since it applies to only one staff member. However, there are similar, if not identical considerations that a board should undertake to understand and to specify in writing if it wishes to provide this option for its school leader.

When this type of payment is made, it is often justified as wanting to reward superior professional performance by the school leader rather than have that individual receive the same compensation regardless of their level of professional performance. "Bonuses" or "performance pay" in this circumstance would be a one-time payment and would not continue year over year. The amount the school leader would receive could vary year over year, depending on their professional performance as determined by the board.

**Discussion.** This use of public funds in this instance could meet the twin tests of "public purpose" and "primary benefit" if very carefully crafted and implemented by the board. If such a plan is adopted by a charter school board, the plan should have the following characteristics to support it as having a qualified public purpose (e.g. improvement of student learning); thus, the primary benefit of it is to the school and its students.

A "bonus" or "performance pay" plan for a school leader should contain all of the following:

1. Board approval at a public meeting prior to beginning of the school year for which the school leader would be eligible for this payment.
2. A clearly written statement of the purpose of the plan, which should be part of the above approval process. The purpose of the plan should be to provide specific benefit to the school and its students. For example, "The purpose of the plan is to provide the school leader with a financial incentive to perform at a very high level."
3. Specification as to the total dollar amount for which the school leader may be eligible, as determined by the board, at its sole discretion.
4. The metrics of performance it will use at the end of the school to determine the percentage of the available "performance pay" dollars the school leader has earned. In other words, the board and the school leader should both know up front when the process begins what will be the basis for the board's determination of full, partial, or no payment of the available "performance pay" dollars.
5. A schedule or calendar of events that include the effective start and end dates and any activities that the board and the school leader will undertake during the term of the plan that will provide the school leader with the board's perspective on their progress to date on achieving the plan's goals (e.g. a mid-year progress report).
6. The approximate dates by which the board will make a determination as to the amount the school leader has earned, based on its evaluation of their professional performance for the past school year in terms of meeting the previously determined goals of the plan.
7. Specify the manner of payment for any earned "performance pay" such as lump sum or other arrangement.

When considering such a plan, charter school boards should act cautiously. Based on the observation of schools that have used a “pay for performance” plan for their school leaders, and as a practical matter, this method of providing school leaders with a financial incentive for professional performance is very time consuming for both board members and school leaders. They can sometimes become a focus that detracts from the normal relationship between the parties, especially in the years when the school leader earns little or none of the available performance pay. Often such plans are initiated with enthusiasm and yet are also often abandoned after a year or two because of those and other factors such as board member turnover and the challenge of consistent, objective evaluation of professional performance, among other challenges. In some cases, “performance pay” just becomes routine and ineffective for its original desired purpose and actually becomes simply a way to increase the school leader’s salary without amending the employment agreement to do so.

**Note:** Another approach to this topic would be to have a rigorous goal setting activity between the board and the school leader prior to the start of the school year, the establishment of performance goals for the leader, amid-year formative feedback to the leader by the board, and a rigorous professional summative evaluation of the school leader’s professional performance at the conclusion of the school year. Then, based on that final evaluation, the board can amend the amount of the school leader’s salary for the upcoming school year in the school leader’s employment agreement as recognition of their past professional performance. This could accomplish the same purpose as performance pay as described above while avoiding the many pitfalls endemic to the “bonus” and “performance pay” process.

#### **Examples of Improper Use of Public Funds:**

1. Donations or contributions
2. Gifts (bonuses that do not meet public purpose standard could be considered gifts)
3. Prizes (could be considered as gifts)
4. Loans of any kind
5. Dues to unrelated organizations

(This list of examples should not be considered all-inclusive and does not contain all of the possible improper use of public funds.)

**Finally, when there is doubt about whether or not a potential expenditure meets the public purpose and primary benefit tests, please contact the school board’s attorney for guidance.**

#### **References:**

1. Minnesota State Constitution, Art. X §1
2. **Public purpose** has been defined by the Minnesota Supreme Court as “[s]uch an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.”  
*Source: Association of Minnesota Counties*