

Let's Sell Food! Food Fundraising Parameters and Legal Obligations

It pays to understand state and federal laws associated with food-related fundraising.

By Brett Geier, Ed.D.



Candy bar sales, spaghetti dinners, bake sales. Food-related fundraising is a traditional way for students to raise money for their organization or school. However, federal nutrition laws and state health department restrictions have made food-related fundraising activities challenging.

Public school district leaders who are responsible for overseeing fundraising activities must be acquainted with state and federal laws so they can provide correct guidance for the groups that conduct those types of fundraisers.

In response to increasing child obesity rates, the federal government—through the U.S. Department of Agriculture's National School

Lunch Program and National Breakfast Program (www.fns.usda.gov/nslp/national-school-lunch-program-nslp and www.fns.usda.gov/sbp/school-breakfast-program-sbp)—mandated new rules for competitive foods and beverages effective July 1, 2014. Schools are prohibited from selling on school premises, competitive foods that do not meet the federal nutritional guidelines, including food sold as part of fundraising activities. (Competitive foods and beverages are those that are not a part of the traditional school meal and are sold in the areas of the school campus where students have access before the school day to 30 minutes after classes end.)

These "Smart Snacks" rules provide the option for states to create

an exemption that allows a certain number of at-school fundraisers that involve food and beverages that do not meet Smart Snacks nutritional guidelines (Child Nutrition Act 2010). To date, 25 states have elected to provide an exemption for their public schools.

Some states enacted exemptions because opportunities for additional revenue for teams and clubs have diminished as a result of Smart Snacks nutritional guidelines. Other states developed exemptions, in part as an objection to the perceived overreach of the federal government into state activities.

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Georgia and Arizona are two states that are pushing back against federal regulations. The Georgia State Board of Education approved an exemption for competitive food fundraisers, allowing 30 events per school (Washington 2014). Arizona is the most conspicuous state to provide exemptions—the state superintendent established a policy allowing

an unlimited number of competitive food fundraisers (Douglas 2015).

Public school administrators should stay informed about their state's position on the Smart Snacks standards and possible exemptions from the regulations. The School Nutrition Association provides information about the number of events and exemptions each state will allow, as well as details about states' policies (https://schoolnutrition.org/uploadedFiles/Legislation_and_Policy/State_and_Local_Legislation_and_Regulations/SmartSnacksFundraisingExemption.pdf).

Onsite Food Preparation

In association with food fundraisers, a group may request the use of public school facilities, such as the concession stand or the school kitchen, to prepare food for sale. In many states, health departments require the school or group using the facility to comply with various health regulations.

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For example, in Michigan, no person can operate a food establishment unless it is licensed by the Department of Health as a food establishment. A food establishment is an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale (Food Law Act 2015).

County health departments frequently monitor such laws, and public school administrators should be prepared to have their food preparation facilities audited periodically. Compliance prevents financial sanctions or closure of food preparation facilities.

Beyond the Food

Overseeing fundraisers can be a challenging financial responsibility for school administrators. If controls are inadequate, financial and procedural errors or malfeasance is possible because many fundraising activities are controlled at the fringes of administrative oversight. If administrators are not acquainted with the laws governing food fundraisers or are negligent in their dissemination and enforcement of the guidelines, the school may violate federal or state laws.

School-related organizations can conduct fundraisers that do not involve competitive foods, of course, such as holding game nights, fun runs, auctions, and recycling programs and selling magazine subscriptions, flowers, or seeds. Fundraisers that involve activities or nonfood

Food Fundraising Guidelines for Administrators and Advisers

1. Know Smart Snacks in School guidelines as developed by the U.S. Department of Agriculture or the exemption enacted by your state. Twenty-five states have created exemptions to the Smart Snacks guidelines. Although some states are similar in the language of the exemption, many variations exist.
2. Become familiar with local school board policies to ensure that your school is compliant with local mandates and procedures for conducting food-related fundraisers.
3. Establish food-related fundraising guidelines to ensure a set of processes and procedures at the building level. They should require authorization by appropriate administration to ensure compliance with federal and state guidelines. Consistently communicate the processes and procedures to staff, emphasizing them for activity advisers and coaches.
4. Ensure facility request forms contain accurate information regarding the procedures for using building space to prepare and sell food. Most likely, state health codes will require a licensed food-service worker to be on the premises during food-related fundraising activities. Providing a licensed food-service worker during the activity will incur additional costs for the school or the group conducting the fundraiser, so it's important to plan for that expense.
5. Explore fundraising activities that do not include competitive foods. There may be opportunities to provide your local community with products or services that it needs—which may yield new sources of revenue and encourage community involvement.

products might encourage a different or wider demographic to participate.

References

- Child Nutrition Act of 1966, 42 U.S.C. § 1779 (2010).
- Douglas, D. 2015. Letter to local educational agencies. Arizona State
- Department of Education, Phoenix, March 30.
- Food Law Act of 2000, 289 M.C.L. § 1107(p) (2015).
- Washington, W. 2014, Schools get state exemption from feds' food rules. *Atlanta Journal-Constitution*, August 22.

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