

# Giftling Clause Limitations

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# Agenda

1. Constitutional language
2. Historical background
3. Breakdown of the factors
4. Public purpose “exception”
5. Specific circumstances

# Article X, Section 18

## North Dakota Constitution

“The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.”

# Article X, Section 18: Background

- Originally passed to prevent cities and counties from giving money to assist with the construction of railroad and from giving money to business enterprises.
- Still wanted cities and counties, which were primarily made up of farmers, to be able to help farmers
  - Original intent came from a statute that allowed cities and counties to help farmers buy seed grain in difficult times
  - Also wanted cities to continue funding “paupers in poor-houses”
- Took its current format in approx. 1919

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# “Political Subdivision”

- ❖ School districts are political subdivisions. N.D.A.G. 2000-L-13.
- ❖ Article VII, Section 2 of the N.D. Constitution:
  - ❖ “The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.”
  - ❖ Must have statutory authority for whatever the expenditure of public funds is.
  - ❖ “[A] political subdivision may not make a donation to a private local hospital without specific statutory authority or a statute from which that authority can be necessarily implied. Even though a political subdivision may give donations for support of the poor without engaging in an industry, business, or enterprise under N.D. Const. art. X, § 18, N.D. Const. art. VII, § 2 requires specific statutory authority, or a statute from which that authority can be necessarily implied before such donations may be made.” N.D.A.G. 2010-L-16, quoting N.D.A.G. Letter to Isakson (Sept. 29, 1992) and 2003-L-51

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# “Loan, Give Credit, or Make Donations”

- ❖ This references all of the public funds of the school district.
  - ❖ The Legislature in N.D.C.C. § 21-04-01(5) has rather broadly classified what funds are "public" by including "all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody." N.D.A.G. 2003-L-31
- ❖ **Donation:** “A gift, esp. to a charity; something, esp. money, that someone gives to a person or an organization by way of help.” Black’s Law Dictionary, 11<sup>th</sup> ed. 2019
- ❖ **Loan/ give credit:** “An act of lending; a grant of something for temporary use”
  - ❖ Generally comes up in context of special assessments, tax breaks, bond issuance, fair housing, guaranty of loans, etc.

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# “Individual, association or corporation”

- ❖ Individual is defined as a human being. N.D.C.C. 1-01-49(3)
- ❖ Association or corporation
  - ❖ Corporation includes both for profit and non-profit
- ❖ “[A] political subdivision is not an individual, association, or corporation under this constitutional provision; therefore, this provision does not prohibit a donation from one political subdivision to another political subdivision.” See 1999 N.D. Op. Att’y Gen. F-14; Letter from Attorney General Nicholas Spaeth to Eugene Belisle (Apr. 7, 1992); 1983 N.D. Op. Att’y Gen. F-17.

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# “Reasonable Support of the Poor”

- ❖ Authorizes welfare programs such as housing programs, reduced cost insurance; TANF; SNAP; WIC; free-reduced lunches, etc.
- ❖ Certain specific topics have been excluded from “reasonable support of the poor” such as donations from political subdivisions to private hospitals and clinics.

# Key takeaways so far...

1. All funds, no matter the source, are public funds when they are in the hands of the school district. This includes federal funds and grant dollars.
2. Even if it seems permissible under Article X, Section 18, you still have to have the authority in statute.
3. Political subdivisions can make donations to other political subdivisions (likely will need a JPA).

# Public Purpose “Exception”

- ❖ The Supreme Court of ND has said that all public funds must be expended for a public purpose.
  - ❖ “[A] public purpose ‘has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political subdivision.’”
- ❖ Supreme Court has also said that this is somewhat of an “exception” to the general prohibition on gifting:
  - ❖ “[W]here an appropriation of public funds is primarily for public purposes it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit.”

# Public Purpose “Exception”

- ❖ Examples of things that did not meet the test:
  - ❖ Non-profit “women in military”
  - ❖ Bismarck Centennial celebration fireworks
  - ❖ Private military non-profit
  - ❖ Property tax relief
  - ❖ Civic facility not owned by the city
- ❖ Examples of things that met the test:
  - ❖ Road improvements
  - ❖ Improvements to one part of a city (“urban renewal”)
  - ❖ YMCA
  - ❖ Zoo (public recreational purpose)

# Recap

1. Generally, a school district cannot loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor.
2. If you want to do what is prohibited in sub 1 though ask yourself the following:
  - a. Is it authorized by statute- can you even do what you want to do?
  - b. Is it for a public purpose?

**BUT WHAT  
ABOUT THE  
SNACKS!?**

## **The most common red flags are:**

- 1. Meals or snacks for staff**
- 2. Gifts for staff**
- 3. Party supplies for staff**

# Public versus private purpose

Ask yourself: who is mainly benefitting from this?

- a. If it is mainly staff, it is a private purpose.
- b. If it is the whole school district, it is a public purpose.

❖ Whole school district includes *everyone* located within the geographic boundaries of the school district. Parents, students, property owners without kids, faculty, staff, administration, etc. (See N.D.A.G. 2005-L-34- city couldn't use public funds to reduce property taxes because that would only benefit property owners and not all members of the public)

# Public versus private purpose

1. State v. Blunt: Director of WSI expended public funds on:
  - a. Gift certificates for employees;
  - b. Food, beverages, flowers, balloons, gifts, decorations, etc. for WSI meetings
  - c. Luncheons;
  - d. Bonuses (not specifically authorized by statute)
2. Criminally charged with misapplication of entrusted property- B and C felonies (based on dollar value). Jury found him guilty.

So....how can you get meals and snacks at these things.....

**IF YOU CAN DONATE SNACKS FOR  
THE MEETING...**



**THAT'D BE GREAT!**

[memegenerator.net](http://memegenerator.net)

# Donations

Foundations, PTAs, booster clubs, jeans days, etc.

**They can spend things on money you cannot!**

# Questions?

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