

1. What are the major requirements for operating a school support organization (SSO)?

- Establish a Tennessee nonprofit organization and file a copy of the nonprofit charter with the Secretary of State.
- Establish and maintain a reasonable organizational structure for the SSO (bylaws, officers, rules for meetings, and membership, etc.)
- Maintain minimum internal control procedures for accounting and protecting any money raised.
- Get permission from the director of schools or his/her designee to conduct fundraisers.
- Maintain accurate records and retain those records as follows:
 - Permanently or until at least four years after dissolution: (a) Official minutes of all meetings, copies of its charter, bylaws, and accounting and internal control policies; (b) Amendments to its charter, bylaws, and accounting and internal control policies; and (c) Documentation of its recognition as a nonprofit organization.
 - Four years: Collection and disbursement records, bank statements, imaged checks, receipts/invoices for disbursements, copies of the monthly treasurer's report, payroll reports, other financial and informational reports, and reports filed with state and federal agencies.
- Annually file a statement of total receipts and disbursements with the director of schools or his/her designee before the end of the school year.
- Maintain adequate separation of duties between SSO officers and school employees who oversee a related school club or athletic group the SSO supports (e.g. Do not let the football coach be the football booster club bookkeeper, etc.)
- A related school representative (official/employee) from the school cannot be the SSO's bookkeeper or sign checks for the SSO.
- Follow the *Model Financial Policy* prepared by the Comptroller of the Treasury.

2. If money is collected by a school employee acting in his or her official capacity, can this money be considered SSO money?

No. Such money is considered school money and must be deposited into the school's accounts (i.e. either the school's general fund or the appropriate school activity fund).

3. Is there a distinction between school sponsored events and SSO sponsored events?

Yes. A 2008 Amendment changed the language so that, if the booster club or SSO **sponsors** the fundraiser, then the SSO is responsible for collecting and accounting for the money, even if the fundraiser is held on school property during the school day with students and teachers involved. Generally, it depends on who assumes responsibility for the fundraiser and sponsors the event.

4. Is there a distinction between volunteers who assist in a school sponsored event and SSO sponsored events?

Yes. A 2008 Amendment clarified who is considered an SSO and thereby required to file as a nonprofit and who is not. The Amendment makes it more clear that a group of people or volunteers, who assist in the raising of funds for a specific purpose under the sponsorship of the school or a school employee, where the funds are turned over to and accounted for by the school, are not considered to be an **SSO**. Such groups of people do not have to file a charter with the Secretary of State and comply with the requirements of this Act if that group of people or volunteers just assists the school and the school is responsible for the fundraising and accounting of the money. But, importantly, if the money was raised for a specific purpose, it must be spent on that specific purpose, according to the *Tennessee Internal School Uniform Accounting Policy Manual*. This allows smaller groups, who do not wish to incorporate or maintain records of their fundraising efforts and keep bylaws, etc., to continue to raise money to support schools and programs at those schools, while alleviating their responsibility of accounting and safeguarding the money thereby shifting the financial responsibility to the school.

5. Does an SSO have to become a 501(c)(3) tax exempt organization with the Internal Revenue Service?

No. An SSO **does not** have to be recognized as an IRS 501(c)(3) federally tax-exempt corporation. The SSO **does** have to incorporate as a Tennessee nonprofit entity and file its charter with the Tennessee Secretary of State.

Although not required, filing for and receiving 501(c)(3) exemption from the Internal Revenue Service and following all applicable guidelines provides the SSO federal tax-exempt status, and allows the organization to benefit from the advantages of such status. Each individual organization is urged to consult with the IRS and/or a tax professional for questions concerning federal tax requirements and/or exemptions.

The Contacts Section of this document provides links to the IRS website information related to the 501(c)(3) exemption.

6. Is an individual school or school principal legally responsible for the actions of an SSO?

No. SSO organizations are legally separate entities from the Board of Education and individual schools. SSOs are responsible for compliance with the Act and the *Model Financial Policy for School Support Organizations*. Likewise, schools and Boards of Education are only responsible for complying with the Act. The Act specifically exempts school boards, school directors, school principals, or any other officials from liability for the failure of an SSO to safeguard SSO funds. However, caution is advised when a Board of Education or school representatives knowingly allows SSOs to violate the Act or becomes aware of illegal solicitation or fraudulent practices.

7. May a school board establish policies that are more restrictive than the minimum requirements under the Act?

Yes. School Boards are allowed to make more restrictive policies than the minimum requirements to implement the Act. More restrictive policies must be adopted by the Board of Education rather than the director of schools or principals. Furthermore, the board may also adopt more restrictive policies than those listed in the *Model Financial Policy for School Support Organizations*.

8. May students turn in money collected during the school day for an SSO sponsored event, whether inside or outside the school, to a school representative for temporary safekeeping?

Yes. With approval from the principal and pursuant to board policy, students can turn in money collected, whether inside or outside of school, for an SSO organization sponsored fundraiser during the school day, so long as the money is in a **sealed envelope** and **never opened by anyone other than the member of the SSO responsible for handling that money**. The school and its employees who take up the envelopes merely act as a "pass through" for the sealed envelopes and the funds inside, on behalf of the SSO. This money should be given to the appropriate SSO member as soon as possible after the event but the time frame must not be longer than three days. The school should be advised as to who the responsible SSO member(s) are. There can be no accounting for the funds at the school by school personnel or employees. *While this situation is allowable, it is not preferable. The preferred practice would be for students to turn the money into an SSO member on the day of collection.*

9. May an SSO operate a bookstore that is located on school grounds?

Yes. A principal can grant permission to a booster club/SSO to operate a bookstore located on school grounds so long as the SSO runs, collects and accounts for the money, and spends 100% of the profits in support of the school. The SSO is required to comply with the *Tennessee Internal School Uniform Accounting Policy Manual* (ISUAPM) when handling, collecting, and accounting for the money at the bookstore.

10. What type of documentation is required for recognition as a nonprofit entity?

An SSO, under the Act, must show proof of its "continued existence as a nonprofit entity" at the beginning of **each** school year (i.e. on an annual basis). Annual registration documentation with the Secretary of State should be provided to the Board of Education to fulfill this requirement.

It is the opinion of this office that in order to exist in the State of Tennessee as a nonprofit entity, the organization must incorporate as a nonprofit entity by filing a copy of its charter with the Secretary of State, Division of Business Services or be a chartered member of a nonprofit organization or foundation. It was also the intent of the legislature that SSOs incorporate in this state as non-profit entities. The forms and procedures necessary for incorporating as a nonprofit entity with the Secretary of State can be found at website listed on the contact page above.

It is the responsibility of the SSO to ensure that all filing requirements or any guidelines for incorporation required by the Secretary of State are met and continue to be met on an annual basis.

If an organization is not incorporated as a nonprofit entity or is not a chartered member of a nonprofit organization or foundation, that organization cannot be considered an SSO within the Act. There are no exceptions or exemptions within the Act that would permit an improperly formed SSO to operate in conjunction with a school without filing a charter (incorporating) with the Secretary of State. This typically requires the assistance of an attorney.

An SSO does not automatically become a tax-exempt organization before the IRS by merely incorporating in Tennessee as a nonprofit entity. An SSO must separately file with the Internal Revenue Service as a 501(c)(3) corporation but filing as a 501(c)(3) with the IRS is **not** required by the Act. In addition, the SSO must follow all necessary procedures established by the Tennessee Department of Revenue in order to be exempted from paying state sales and use taxes.

11. Does the Act require an SSO to obtain a federal employer identification number (EIN) or state sales tax exemption?

No. The Act does not require an SSO to obtain an Employer Identification Number (EIN) or sales tax exemption. However, the Act prohibits an SSO and other nongovernmental groups from maintaining a bank account bearing the EIN of a school or of other school-related governmental entities, and from using a school's sales tax exemption.

Banking institutions generally require a tax identification number, either an EIN or social security number, in order to open a bank account. Using an individual's social security number for identification of an SSO account creates potential tax and credit issues for the holder. Therefore, this office strongly encourages each SSO to obtain a federal EIN for use in opening bank accounts. The application form for obtaining an EIN can be accessed at the website listed on the contact page above. The required form is Form SS-4. Organizations are not required to have federal 501(c)(3) exemption status to obtain an EIN.

However, in order to be exempted from state sales tax, an SSO must separately apply with the Tennessee Department of Revenue and be accepted by the IRS as a 501(c)(3) corporation.

12. Does the Act require SSOs to turn over the funds in their accounts, for any reason, to a school for which they raise the money?

No. There are no provisions in the Act requiring the SSOs to turn their money over to a school for accounting or any other purposes. However, the Act does state that SSO funds deposited into a bank account bearing the EIN of a school are deemed to be donations from the organization to the school.

13. May an SSO refuse to turn money over to a school after the school has made a request for funding?

Yes. There are no provisions in the Act requiring SSOs to turn their money over to a school for accounting or any other purposes. It should be noted, however, that SSO funds must be used for the purposes for which they are raised.

14. Does the Act require SSOs to have an audit?

No. The Act does not require SSOs to have an audit. However, federal, state, grant, local board of education, or other regulations may require some type of audit. The Act requires SSOs to provide, at a minimum, a statement of total revenue and disbursements to the director of schools or his/her designee before the end of the school year.

Please note that although the Act does not require SSOs to have an audit, the Act provides that the Office of the Comptroller of the Treasury has the authority to perform audits of such organizations at the Comptroller's discretion. In addition, the Act authorizes the Comptroller of the Treasury to "adopt a model financial policy for school support organizations." The adopted model policy suggests that SSOs conduct a "financial review."

15. Can a school be responsible for accounting for the funds of an SSO by mutual agreement?

No. *Tennessee Code Annotated* 49-2-604(g), expressly prohibits a school representative (i.e., a school board member, director of schools, principal, or any individual who is primarily responsible for accounting for school system funds or the funds of an individual school) from acting as a treasurer or bookkeeper for an SSO.

Any funds turned over to the school by an SSO would be considered internal school funds and would belong to the school and be handled by school personnel. However, part 607, section (b) of the Act specifically requires that:

Any donation made by a school support organization to a board of education or school shall be disbursed only in accordance with written conditions that the school support organization may place upon the disbursement of the funds and shall be in accordance with the goals and objectives of the school support organization.... School support organization funds that are donated to an individual school shall not be considered as student activity funds. These funds shall be considered instead as internal school funds from the point of their donation to the respective school....

Keep in mind that, even if an SSO does not maintain a separate bank account and, instead, turns over all proceeds from every event directly to the school, the organization would still fall under the purview of the Act if the organization is soliciting, raising, or collecting money, materials, property, or securities to support a school district, school, school club, or any academic, arts, athletic, or social activity or event related to a school while using the school district or individual school's name, mascot, property or logo.

Assuming proper local board policy is in place, nothing in the Act would prohibit a group or organization from assisting with school-sponsored fundraisers or events, or from

soliciting donations to be given directly to the school by the donor.

Moreover, the Act (as amended in 2008) expressly allows community volunteers/parents to assist and collaborate with a school or a school employee supervising a fundraising activity which raises money for a specific school club, art, academic or athletic event or purpose and the *Tennessee Internal School Uniform Accounting Policy Manual* requires the funds raised for a specific purpose to be spent accordingly.

Many questions are raised that relate to money received for social events held at or in connection with a school, including school dances, proms, banquets, etc., that are sponsored by an SSO. As noted above, the Act (as amended, 2008) makes it clear that all money received from any source for "school-sponsored" student activities held at or in connection with a school including "school-sponsored" social events such as student dances, etc., are considered student activity funds. However, the Act neither inhibits nor impairs in any way, the ability of SSOs to sponsor their own social event and retain the funds in the name of the SSO.

Many questions have also been raised regarding money received from fundraisers in which students, school personnel, and/or school property are involved. As stated above, funds raised at "school-sponsored" events or activities held during the school day at which school personnel, students, and school property are involved, are student activity funds. Moreover, if a school employee supervises a "school-sponsored" fundraising event at which students are involved, those funds are student activity funds. However, funds raised at "SSO sponsored" events, regardless of whether they are held on school property during the day, belong to the SSO.

Please note that the *Tennessee Internal School Uniform Accounting Policy Manual* requires internal school funds to be used for the purposes for which they were received. Therefore, if school personnel and community volunteers collaborate on a project or event designed to raise money for a particular purpose, then a school official is prohibited from using that money for another purpose.

The following questions address specific examples of fundraisers involving students and/or school personnel. The answers presume that the SSO involved has been recognized by the local board of education and has received required approval for the fundraising activity.

16. Can an SSO organization use school facilities to conduct a fundraiser? If so, can such a fundraiser be held during the school day as defined by the Act?

The answer **depends** on local school board policy. The Act states that a group or organization may not use school facilities for raising money, materials, property, or securities until the local board of education has adopted a policy, including required minimum provisions set forth in the Act, concerning cooperative agreements, SSOs, and the use of school facilities for fundraising purposes. Therefore, local school board officials must decide whether the use of school facilities for fundraising purposes by SSOs or other outside groups or organizations will be allowed, then adopt appropriate policy.

17. Would an SSO be allowed to retain collections from a school dance held for students at the school (for instance, the Homecoming Dance), if the organization was responsible for set-up, collections, clean-up, etc.?

Yes. As long as the SSO "sponsors" the event and is solely responsible for the event, collecting and accounting for the money, safeguarding the funds and depositing the funds into the SSO account in a timely manner (for example, within 3 business days).

18. Can a kick-off assembly be held at the school during the school day to promote the start of an SSO resale fundraiser, such as a candy sale in which students will be participating?

Yes. As long as the SSO "sponsors" the event and is solely responsible for every aspect of the event.

19. Could the soccer coach participate in a car wash fundraiser sponsored by the soccer booster club to benefit the soccer team?

Yes. If the car wash fundraiser is "sponsored" by the SSO, the soccer coach could participate in washing cars. However, the soccer coach could not be responsible for supervising the event for the SSO, including any related financial activities.

According to the Act, the soccer coach would be considered a "school representative" in relation to the soccer team and its booster club. The Act prohibits a school representative from acting as treasurer or bookkeeper of an SSO, or from being a signatory on checks. The Act does not prohibit a school representative from taking part in a related SSO fundraiser, so long as the school representative is not responsible for collecting, counting, or depositing the funds raised.

20. Could the band director (a school employee) sell fruit or other items in a fundraiser sponsored by the band booster organization and turn his/her related collections over to the band booster treasurer for that event?

Yes. The band director could personally sell fruit or other items in a fundraiser sponsored by the band booster club.

According to the Act, the band director would be considered a "school representative" in relation to the band booster club, and therefore, could not act as bookkeeper or treasurer, or be a signatory on the bank account. The Act does not prohibit the band director from individual participation in a resale fundraiser conducted by an SSO as long as the director is not responsible for supervising the event, including the financial activities.

21. Can an SSO sell t-shirts to students at school and keep the money?

Yes. If SSO personnel are responsible for all aspects of the fundraiser, then money received from sales of the t-shirts, including shirts sold to students, would generally be considered SSO money.

If the t-shirts are sold in a bookstore located at the school that is run/operated by the SSO/booster club, money received from the sales would be considered SSO/booster club funds as long as the principal grants the SSO/booster club permission to operate the bookstore. The Act (as amended in 2008) allows the local board and principal to enter into an agreement with an SSO to run a bookstore located on school property as long as 100% of the profits are used for support of the school and the SSO complies with the *Tennessee Internal School Uniform Accounting Policy Manual* when operating the bookstore.

If the bookstore is not operated and run by the SSO, then a t-shirt sale by the booster club cannot be done from the school bookstore and appropriate measures must be taken to maintain adequate separation between the school and its involvement with the t-shirt sales and the SSO's involvement as the "sponsor" of the fundraiser.

22. Can an SSO organization hold a steak dinner or auction on school grounds at night with students selling tickets, and with SSO personnel and students working at the event, and the proceeds be considered SSO funds?

Yes. Assuming authorizing local school board policy exists, if SSO personnel are responsible for supervising the planning and operation of the event, including related financial activities, then proceeds from such an event would generally be considered SSO funds.

23. Can a walk-a-thon, fun run, or other like event be held during the school day on school property and proceeds from pledges obtained by students/school employees participating in the event be retained by an SSO?

Yes. As long as the local board allows such a fundraising activity, an SSO can "sponsor" such an event and the proceeds of that fundraiser will belong to the SSO/booster club.

The following questions address individual accounts (for example for an athlete) within fundraisers as well as considerations related to coaches pay. The answers presume that the SSO involved has been recognized by the local board of education and has received required approval for the fundraising activity. The views expressed within the examples are not intended to be legal advice but serve only to provide additional guidelines for SSOs (Also see the Forward and Disclaimer) based on our experience.

24. Can an SSO reward players/students for their fundraising efforts with credits against their individual accounts (what they must pay for a trip or for gear, etc.)?

No.

Parent Booster USA: The IRS has found that the use of individual fundraising accounts frequently results in illegal private benefits and strongly encourages its members not to use individual fundraising accounts since they may result in fines and penalties from the IRS and/or loss of tax- exempt status. In 2007 and 2008, at least three booster clubs in Kentucky were assessed fines and penalties by the IRS for engaging in fundraising activities in which parents and students were given credit for volunteering and fundraising. In one of the letters to a booster club, Lois Lerner, Director of Exempt Organizations for the IRS, reportedly stated that any booster club that raises money to benefit ***an individual rather than the group is in violation of federal law*** and stands to lose its tax-exempt status. An individual fundraising account is any method by which a booster club credits an individual or family for all, or a portion, of the funds raised by the individual, family or organization.

Kentucky Department of Education Redbook FAQ: Why does the IRS have a rule that fundraising cannot be tracked by individual student? When fundraising proceeds are attributed to specific students and used to offset fees or costs incurred by those students based upon the amount sold or the amount of time worked, it represents income to the students/parents. It is considered private benefit or inurement to the individuals. Booster groups in Kentucky were audited by the IRS several years ago and were fined tens of thousands of dollars for unreported income, penalties, and interest as a result of noncompliance with the private benefit and inurement prohibition.

PTO Today: Article - "Tax Court Rules on Common Fundraising Practice" (A Virginia booster club was faulted for giving credit to families based on the amount they raise.) Fundraising credits are not charitable.... the judge wrote that the club's point system may well be a rational and wholesome way to raise money to benefit young athletes. However, he also wrote that the point system does not advance a tax-exempt purpose. To receive a 501(c)(3) federal tax exemption, an organization must exist to benefit a public good, not individual people.

25. Can a booster club give gift cards to players as an incentive to make good grades?

No. Giving cash or cash equivalent incentives to high school student athletes is against the TSSAA amateur rule and could cause the student to become ineligible to play in the sport for 12 months. See below excerpt from the TSSAA Handbook. (Note: It is of utmost importance that a booster club never give an athlete anything of value without first consulting with the school athletic director.)

**TSSAA
Handbook*
Award Rule:**

Section 19. A student may accept a medal, trophy, state championship ring, high school letter, sweater, jacket, shirt, blazer or blanket but nothing else of commercial value from his/her school. (A sweater, jacket, shirt, blazer or blanket must carry the high school letter or other appropriate award emblem.) Acceptance of forbidden awards will cause a student to become ineligible for 12 months in the sport in which the violation occurs. Bowling, golf and tennis students will abide by USBC, USGA, and USTA regulations in accepting awards.

Section 20. A member school that has any connection with the presentation of a forbidden award — such as assisting in the selection of the person to receive the award, permitting the award to be given at a school function, or holding the award for a student until he/she has graduated — shall be subject to suspension from tournament play in the involved sport(s) for one season.

**The TSSAA Handbook is updated annually. The above excerpt was copied from the 2019-2020 edition. The reader is advised to consult the latest edition of the Handbook before taking any action.*

26. Can an SSO pay salary supplements to coaches directly?

It depends:

No. Payments for salary supplements must not be made directly to the coaches, assistant coaches, or other employees (e.g. teachers, principals) of the Board of Education. Salary supplements for Board employees must be paid through the Board of Education. The SSO must make donations to the Board for this purpose rather than paying Board employees directly.

Maybe. However, we are not aware of law or regulation that would prohibit non-school employees from receiving a salary payment directly from an SSO. The SSO must keep in mind IRS regulations and the requirements of TSSAA when applicable. Any such payment must not be discriminatory in nature.

The SSO must not make salary supplement payments of any kind unless the Board of Education has approved fund raising for that purpose. The Board of Education and the SSO need to be fully aware of the possibility of legal liabilities arising from interactions with students related to school activities and events.

In addition, the Board of Education and the SSO need to be fully aware of the possibility of legal liabilities arising from any and all discriminatory practices.

27. Can an SSO recruit student athletes?

No. This is not a proper function for an SSO. Recruiting, whether directly or indirectly appears to be in violation of TSSAA rules even if a school board or school official authorized fund raising for this purpose.

28. May an SSO charge and collect fees for school-sponsored activities?

No. SSOs must not charge fees to students to participate in school-sponsored activities or events. *Tennessee Code Annotated* 49-2-603(6)(f) defines fees charged to students for school sponsored academic, art, athletic or social events as student activity funds. As such, they must be accounted for by the school and deposited in the school bank account. Likewise, state law makes no provisions for SSOs to charge fees to students or their parents for participation in school-sponsored activities or events.

29. May an SSO require donations or participation in fundraisers as a fundraising method for students to participate in school sponsored activities?

No. Required or “suggested minimum” financial participation of students or their parents, whether through donations or required fundraising, will be interpreted as charging fees, and, as noted in 25 above, SSOs must not charge fees to students to participate in school sponsored activities or events. Likewise, state law makes no provision for SSOs to charge fees to students or their parents for participation in a school-sponsored activities or events.