



the *Policy Page*

A special publication for Virginia School Boards Association's Policy Services subscribers

Number 93, February 2004

POURING RIGHTS

What are the pitfalls and benefits of Exclusive Vendor Contracts?

By Kyle Farmer

Exclusive vendor contracts, often referred to as “pouring rights” contracts, allow food and beverage companies to place their products in schools in return for financial payments and other non-monetary benefits.

Arizona State University’s Commercialism in Education Research Unit says that “pouring rights” contracts increased by 1,668 percent from 1990 to 1999. CERU believes that mixing commercial activities with public education raises “fundamental issues of public policy, curriculum content, the proper relationship of educators to the students entrusted to them, and the values that the schools embody.”

While these contracts generally provide districts with large amounts of money (sometimes upfront), they also contain potential pitfalls that have led some districts to ban them completely, such as Los Angeles, San Francisco, Seattle, and even some Missouri school districts. In Minnesota a bill was introduced banning the practice statewide.

Regardless of your opinion about the appropriateness of using exclusive vendor contracts to bring much-needed revenue into local schools, there are a number of issues board members and administrators should consider before signing on the dotted line.

The Pros of “Pouring rights”

The most obvious benefit of entering into “pouring rights” contracts is the influx of revenue for the school district. Here are four common economic benefits:

- Most “pouring rights” contracts contain an upfront payment for the right to exclusive access to the school district. Since this provision is extremely important to the vendor, most are quite generous in this regard.
- The second source of economic benefit comes from commission payments based on the volume of products sold. For each item sold, most agreements provide a certain percentage of the net sale to the school district.
- Where applicable, many contracts allow school districts to retain the refunds of deposits for returned containers sold in the vending machines.
- Some vendors provide a one-time only fee as a means of covering the school’s costs of research, in-service programs, and negotiating and drafting contract terms.

“Pouring rights” contracts often present non-monetary benefits to districts, schools and students, as well. Examples include student scholarships, athletic equipment and facilities, computer equipment, Internet access and numerous other non-monetary benefits given in addition to, or in place of, economic benefits.

It should also be noted that there are many schools who allow snack products in their schools but who are not currently benefiting from “pouring rights” contracts. In essence, the vendor is able to enjoy complete exclusivity, but is not asked to compensate the district or school in any way. If the district chooses to provide vendors access to its students, securing a “pouring rights” contract would at least afford the district an economic benefit that did not previously exist.

“Pouring Rights” pitfalls

While school districts stand to reap economic benefits from exclusive vendor contracts, there are some potential traps that administrators should be wary of when attempting to negotiate contracts with large corporations. The three most common disadvantages to “pouring rights” contracts are: quotas, health concerns, and potential conflicts with the National School Lunch Program.

Contractual quotas: Many contracts contain provisions requiring schools to repay advanced monies or forfeit promised monies for failure to meet contractual quotas. A prime example comes from Colorado Springs school district’s exclusive vendor contract with a major beverage company. While the contract promised lucrative rewards for the school district, the rewards would only be realized once the district sold 70,000 cases (or 1.68 million bottles) of the corporation’s beverages.

Health concerns: While there are no scientific studies directly linking childhood obesity with the increase in exclusive vendor contracts, there is no dispute that childhood obesity has increased in recent years. The Center for Disease Control reported that 15 percent of adolescents between the ages of 6-19 were overweight as of 2000. This figure represents a 4-percent increase since 1994.

Beyond the fact that overweight children face greater chances of being overweight adults, childhood obesity has been directly linked to an increase in childhood diabetes. Almost 20 percent of childhood diabetes cases in the United States today are labeled type II diabetes. This form of diabetes, previously considered an exclusively adult disease, is directly linked to obesity and has risen at an alarming rate in children. Other health risks include heart disease, high blood pressure and high cholesterol. Along with physical health risks, overweight and obese children face numerous social and psychological risks including low self-esteem, depression and social discrimination.

A wide variety of groups have begun to speak out against “pouring rights” contracts, such as the National PTA, the National Education Association and the American Dental Association. These groups argue that allowing corporations to exclusively sell soda pop and “junk food” during school hours has a direct effect on the eating habits and poor health of our nation’s school children.

“The real solution to the obesity problem,” counters the National Soft Drink Association, “is daily physical education and more nutrition education for every school-aged student.”

Potential conflicts: The final downside to “pouring rights” contracts concerns a possible conflict with the National School Lunch Program. The program, created in 1946, is designed to provide schools with federal funds in order to provide nutritious, affordable meals to all school children. The NSLP includes restrictions on the sale of foods of minimal nutritional value (soda pop, candy, etc.) in cafeterias during school lunch periods. If a district’s exclusive vendor contract calls for the sale of the vendor’s products during lunch periods, the school could lose federal funding.

Kyle Farmer is an MSBA School Laws intern.

*This article was reprinted with permission from the Missouri School Boards Association.
The original article was published in the Winter 2004 edition of Voice.*