



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2021

The Honorable Larry Taylor  
Chair, Senate Committee on Education  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

**Opinion No. KP-0387**

Re: Whether House Bill 1525 requires school districts to accept PTA donations designated to fund supplemental educational staff positions and use funds donated for that purpose for the 2021–2022 school year (RQ-0411-KP)

Dear Senator Taylor:

You ask whether House Bill 1525 requires school districts to accept PTA donations designated to fund supplemental educational staff positions and use funds donated for that purpose for the 2021–2022 school year.<sup>1</sup>

**Background**

Section 11.156 of the Education Code governs the acceptance and use of donations to public schools. TEX. EDUC. CODE § 11.156 (a), (b). During its recently concluded regular session, the Eighty-seventh Legislature enacted House Bill 1525, which adds subsection 11.156(c), specifically addressing certain donations by a parent-teacher organization or association (a “PTA”) designated to fund supplemental educational staff positions at a school campus. *See* Act of May 31, 2021, 87th Leg., R.S., H.B. 1525, § 2 (codified at TEX. EDUC. CODE § 11.156(c)) (“House Bill 1525” or “section 11.156(c)”). You tell us that Austin Independent School District (“Austin ISD”) has taken the position that because the district completed its budget and staffing decisions for the 2021–2022 school year before House Bill 1525 became effective on September 1, 2021, subsection 11.156(c) has no application to Austin ISD’s funding and staffing of positions for the 2021–2022 school year. Request Letter at 2. You ask whether House Bill 1525 requires a school district to accept and spend donations already received by PTAs to fund positions for the 2021–2022 school year. *Id.*

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<sup>1</sup>*See* Letter from Honorable Larry Taylor, Chair, Senate Comm. on Educ., to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (June 11, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0411KP.pdf> (“Request Letter”).

**HB 1525 creates a mandatory duty for districts to accept and use funds donated by PTAs and directed by the campus to fund supplemental educational staff positions.**

Subsections (a) and (b) of section 11.156 of the Education Code currently provide:

(a) A conveyance, devise, or bequest of property for the benefit of the public schools made by anyone for any . . . district, if not otherwise directed by the donor, vests the property in the . . . board of trustees of the . . . district, or their successors in office as trustees for those to be benefited by the donation.

(b) The funds or other property donated or the income from the property *may* be spent by the trustees:

(1) for any purpose designated by the donor that is in keeping with the lawful purposes of the schools for the benefit of which the donation was made; or

(2) for any legal purpose if a specific purpose is not designated by the donor.

TEX. EDUC. CODE § 11.156(a), (b) (emphasis added). Subsection (a) provides that unless the donor directs otherwise, a school district board holds a donation to district public schools in trust. *Id.* § 11.156(a).<sup>2</sup> Subsection (b) provides that trustees, including school district trustees, “may” spend funds, property, or income for lawful purposes authorized in the statute. *Id.* § 11.156(b). When used in a statute, the word “may” generally “creates discretionary authority or grants permission or a power.” TEX. GOV’T CODE § 311.016(1); *Pederal Energy, LLC v. Bruington Eng’g, Ltd.*, 536 S.W.3d 487, 492 (Tex. 2017) (“‘May,’ when used in a statute, indicates that the provision is discretionary.”). Thus, subsection (b) grants a school district discretionary authority to spend donated funds either as designated by the donor or, if the donor does not designate a purpose, any other lawful purpose. TEX. EDUC. CODE § 11.156(b); *see also* Tex. Att’y Gen. Op. No. KP-0236 (2019) at 2 (stating that “while the District’s use of any property acquired or received by its trustees must comply with the terms of the transfer, the use must also serve a lawful purpose of the District”).

House Bill 1525 adds the following language:

(c) A school district *shall*:

(1) accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus; and

(2) spend the donation accepted under Subdivision (1) for the designated purpose at the direction of and within the time period specified by the school campus for which the donation was designated.

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<sup>2</sup>Not pertinent here, subsection 11.156(a) also provides for county and municipal public school trustees. TEX. EDUC. CODE § 11.156(a).

House Bill 1525, § 2 (codified at TEX. EDUC. CODE § 11.156(c)) (emphasis added). Unless context necessarily requires a different construction, the word “[s]hall” imposes a duty.” TEX. GOV’T CODE § 311.016(2); *see also Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131 (Tex. 2018) (“By its plain and common meaning, ‘shall’ denotes mandatory action.”). Moreover, by providing in subsection (b) that a school district “may” spend a donation for specified purposes, the statute reinforces the reading of “shall” in subsection (c) as creating a mandatory duty for a school district to spend designated funds as the subsection provides. TEX. EDUC. CODE § 11.156(b); House Bill 1525, § 2 (codified at TEX. EDUC. CODE § 11.156(c)). Thus, subsection (c) creates a duty for a school district to accept and spend those donations, as we presently explain.

First, the duty in subsection 11.156(c) concerns only a donation from a PTA recognized by the school district. House Bill 1525, § 2 (codified at TEX. EDUC. CODE § 11.156(c)(1)). Second, the duty applies only to a PTA donation that designates funding for a supplemental educational staff position or positions at a school campus. *Id.* Third, the statute provides that the school district must act according to the benefited school campus’s direction and specification of the time period within which to spend the donation according to its designation.<sup>3</sup> *Id.* (codified at TEX. EDUC. CODE § 11.156(c)(2)). In such circumstances, a school district has a duty to accept and spend a donation according to the statute. *Id.* The statute does not address whether acceptance and expenditure must occur during any particular fiscal year, only that the expenditure occur “within the time period specified by the school campus.” *Id.*

**HB 1525 requires a district to spend donations received for the 2021–2022 school year to the extent that the donations satisfy all conditions of subsection 11.156(c).**

Your second question is whether a school district need not comply with subsection 11.156(c) for the 2021–2022 school year if the school district issued its final budget and staffing orders before House Bill 1525’s effective date, September 1, 2021. Request Letter at 2. Briefing received from Austin ISD argues that subsection 11.156(c) should be construed in the context of the entire educational statutory scheme as allowing a school district to postpone spending a donation designated for supplemental educational staff until the 2022–23 fiscal year.<sup>4</sup> The brief informs us that Austin ISD adopted its final 2021–2022 budget on June 24, 2021, for a fiscal year beginning June 30, and with classes beginning two weeks before September 1. Austin ISD Brief at 1–2.

A school district may not spend its public funds “in any manner other than as provided for in the budget adopted by the board of trustees.” TEX. EDUC. CODE § 44.006(a). But the board of trustees “may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses.” *Id.* Courts will read an unambiguous statute according to its plain language unless that interpretation would lead to absurd results. *Combs v. Health Care Servs. Corp.*, 401 S.W.3d 623, 629 (Tex. 2013). While construing House Bill 1525 and its effective date as written

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<sup>3</sup>Although section 11.156 does not address potential limitations on the donor’s designation or a campus’s direction, a donation may be used only for lawful purposes of a school district. *Id.* § 11.156(b); *see also* Tex. Att’y Gen. Op. No. KP-0236 (2019) at 2.

<sup>4</sup>*See* Letter from Holly McIntush, Thompson & Horton LLP, on behalf of Austin ISD, to Honorable Ken Paxton, Tex. Att’y Gen. at 2–3 (June 30, 2021) (“Austin ISD Brief”) (on file with the Op. Comm.).

potentially presents administrative challenges, such a construction does not produce an absurd result—one that no rational legislature could have intended.

In sum, House Bill 1525 provides that subsection 11.156(c) is effective on September 1, 2021. Since that date, a school district has a duty to accept and spend certain donations when (1) the donation derived from a parent-teacher organization or association recognized by the district, (2) the donation is designated to fund supplemental educational staff positions at a school campus, and (3) the campus directs the expenditure for its designated purpose and specifies the time period within which to spend the donation. Whether a specific donation satisfies the requirements of the statute will depend on the particular facts, which cannot be resolved in an Attorney General opinion. *See* Tex. Att’y Gen. Op. No. KP-0239 (2019) at 3. Accordingly, House Bill 1525 requires a district to spend donations received for the 2021–2022 school year to the extent that the donations are made consistent with subsection 11.156(c).

S U M M A R Y

Subsection 11.156(c) of the Education Code, as enacted by House Bill 1525, requires a school district to accept and spend a donation from a parent-teacher organization or association designated to fund a supplemental education staff position at a specified campus in specified circumstances.

House Bill 1525 provides that subsection 11.156(c) is effective on September 1, 2021. On or after that date, a school district has a duty to accept and spend certain donations once all of the specified conditions of subsection 11.156(c) have occurred, namely that (1) the donation derived from a parent-teacher organization or association recognized by the district, (2) the donation is designated to fund supplemental educational staff positions at a school campus, and (3) the campus has directed the expenditure for its designated purpose and has specified the time period within which the donation is to be spent. Accordingly, House Bill 1525 requires a district to spend donations received for the 2021–2022 school year to the extent that the donations satisfy all conditions of subsection 11.156(c).

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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