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The Legality of High School Athletic Fees

Ruth H. Alexander, Ed. D.
University of Florida

Funding high school athletics is becoming increasingly difficult in the United States and user fees, or "pay to play," for high school athletics participation are being charged in some states. A few states have issued mandates against these fees thus making them illegal. While no case law, education regulation or administrative code prohibit it in some states, other states, by general philosophy and not legal mandates, have held against charging this fee. Yet, others have charged fees for many years in order to fund their athletic programs and some are just beginning to levy fees for this participation.

The case law begins in Idaho (Paulson v. Minidoka County School District No. 331, 1970) when the court ruled:

> That social and extracurricular activities were not necessary elements of a high school career and therefore allowed the schools to set fees to cover costs of such activities to be paid by students so participating.

This was the practice for many years in Idaho, but, now, with their declining rate of participation in athletics, the school systems have chosen not to continue this practice in athletic programs.

A case occurred in Michigan in 1970 (Bond v. Ann Arbor School District, 1970) where the Michigan Supreme Court using the Paulson case permitted the extracurricular fees to be levied. More recently, in another Michigan case (Attorney General v. East Jackson Pulic Schools, 1986), cited both the Paulson and the Bond cases in answering the question of charging fees for extracurricular activities. In the instant case, the Michigan court commented:

> In accordance with this, we do not find interscholastic athletics to be a necessary element of any school's activity ... These activities are optional and nonessential and provisions have been made to waive the fees for those students who cannot afford to pay.

The court then stated from the guidelines in effect since 1970 by the State Board of Education:

> Fees for participating in interscholastic activities are legally possible if they are extracurricular in nature, students are not required to take them, and no grade or credit is given.

The reaction to the fees was not good and the loss in participation yielded 25 to 30 per cent in one school district. The fees were referred to as "nightmares" (Hardy, 1986).

More recently, a California court (Hartzell v. Connell, 1982) held a different opinion when it ruled on a taxpayers' action against high school districts requiring students to pay fees for participation in extracurricular, music and sports activities. The trial court had denied declaratory and injunctive relief from the fee requirement. However, the Supreme Court of California reversed and held that the imposition of fees violated the "free school" guarantee of Cal. Const., art IX, § 5, even though none of the affected extracurricular activities yielded any credit toward graduation and since such activities constitute an integral component of public education. The court went on to add that the Constitutional defect in such fees could neither be corrected by providing waivers to indigent students, nor justified by the district's financial hardship. Furthermore, the court held that the imposition of fees also violated Cal. Admin. Code, tit. 5, § 350, which bars requiring a public school pupil "to pay any fee, deposition, or other charge not

specifically authorized by law.

In New York, Education Law § 1718(1) (State Education Department, 1990) specifically regulates the assessment of fees. The Commissioner of Education stated:

> New York school districts may not charge students fees to qualify for participation in a sport(Lindel, 1991).

Lindel, Acting Bureau Chief, went on to say that anyone can donate money if he/she chooses, but may not be barred from participation if he/she chooses not to make a donation.

New Jersey and Kansas laws forbid the charging of fees and even in Puerto Rico, the belief is held that education is a government responsibility.

> Extracurricular activities are considered part of the education curriculum and are conducted at no cost to parents or students. Anyone charging fees for such activities is vulnerable to an admininstrative or judicial action against him/her (Pepe, 1992).

In one case in Colorado, (Pacheco v. Sch. Dist. No. 11 El Paso County, 1973), the trial court favored a parent's attempt not to pay athletic fees, not because of the constitutional questions but ruled in her favor because she was financially unable to pay. On appeal, the Colorado Supreme Court upheld the trial courts decision.

Some school districts who do not have a legal mandate not to charge fees have chosen to do so. High school budgets for athletics have been seriously cut back during the past ten years and athletic directors and coaches say no other choice exists if the programs are to be maintain. Even though most high school budgets are no more than 3% of the entire budget for the operation of a school district, athletics seems to be viewed as a "frill" and should bear the brunt of streamlining. The fact that most parents and boosters seem to rally behind these reductions in the budget and "scream" the loudest when athletic programs are reduced, the education administrators use this parental support to their advantage as they are confident that someone will find the money somewhere to pay the bill for athletics, the "bill" for which the school system are withdrawing their support.

Vermont has not given any legally direction but informally say that charging fees as a practice is not permissible. Delaware, Maine, New Mexico, Alabama, Wyoming, Maryland and even Idaho now do not charge fees because of the desire to offer free educational opportunities to all rather than legally mandate it.

Florida High School Activities Association reports that they know of no schools who charge beyond an insurance plan for participants and possibly the purchasing of their shoes by the athletes. Nebraska also has refused to charge fees although no case law, regulations or statutory authority exist.

Arizona began charging fees although the ageless case (Alexander v. Phillip, et al. 1927) existed which stated:

> Stadiums are a "school house" ...athletics are a legal means of imparting knowledge and competitive athletic games, therefore, from every standpoint may properly be included in a public school curriculum.

The charging of fees in Arizona, however, is on the decline as is athletic participation. Some schools in Connecticut have been charging fees for 20 years but this is also declining. Generally, the people feel the "pay to play" ruins athletic programs as young students do not want to pay to sit on the bench. One Georgia administrator said he would drop sports before he charged for participation even though a case (Smith v. Crim, 1977) said high school athletics are extracurricular and not essential to the prescribe curriculum but must be made available to all children.

In Oregon, 40% of the schools charge fees and the belief there is that the practice will grow. The Ohio High School Athletic Association reports that many schools, 100 or more are charging fees for extracurricular activities. Thirty-five percent are charging fees in Massachusetts and it is increasing. Participation is down, though, as fees range from $10 to $210 for an individual and from $20 to approximately $420 for a family. In Illinois, students have been paying since 1976. Some Connecticut schools have been charging for 20 years, since 1978, but are searching for other means to pay for athletics. The fee assessment "ruins athletics" (Pepe, 1993).

A 1982 study showed that 11% of the high schools in the United States charged participation fees in sports programs. In 1984-1985, 65% of the schools in Minnesota charged fees to play sports and more recent information reveals that amount has increased to 70%.

How the court interprets athletics and extracurricular activities, as a privilege or protected right, would seem to influence a decision to charge fees by a school system. In Tennessee (Kelly v. Metropolitan County Bd. of Ed. of Nashville, 1968), a court said:

> Although the right to pursue an academic education is not directly affected, the penalty infringes upon a facet of public school education which has come to be generally recognized as a fundamental in the educational process."

The Kansas Court of Appeals (Stone v. Kansas State High School Activities Ass'n, 1988) took a position that participation in extracurricular school activities is not a fundamental right, but that a student's interest in participating in such activities should still be constitutionally protected with due process of the law.

In an early case in Montana, (Granger v. Cascade County School District no. 1, 1972), the Supreme Court ruled that charging fees for athletics was outside "the free public school system" as defined by the Montana Constitution. In another case in Montana, (Moran v. School District #7, 1972) the court held that the right to attend school includes the right to participate in extracurricular activities. The court reasoned that sports are an integral part of the total education process. This education process is extremely important, and sport participation may not be denied when no reasonable basis exists upon which to distinguish among the various parts of the educational process. The charging of fees would certainly seem inappropriate, even unconstitutional, in an interpretation as strong as this one.

The Supreme Court of Alabama (Gulf South Conference v. Boyd, 1979) held the right to participate in athletics is a property right of present economic value. Alabama feels equally strong as to the unconstitutionality of charging fees for the right.

Two Florida cases ruled athletics to be a protected right. In the first case, (Florida High School Activities v. Bradsaw, 1979) the court held that the opportunity to participate was a constitutionally protected right when the disciplinary action following a forfeiter for two games was questioned in which Bradshaw had participated as an in eligible athlete. In another case in Florida (Florida High School Activities Ass'n v. Thomas, 1982) Thomas, who had been allowed to compete in post season play, successfully won his claim as the court ruled his constitutional rights had been violated. The athletic program was a property right and not a privilege.

In summary, the practice of charging fees has been interpreted by the courts with a wide array of decisions in the legal system. Many states have recognized that extracurricular activities, specifically athletics, is a right and not a privilege, thus the fees are unconstitutional. These states include Alabama, California, Delaware, Florida, Georgia, Idaho (now), Iowa, Kansas, Maine, Maryland, Nebraska, New Jersey, New Mexico, New York, Tennessee, Vermont, Wyoming and Puerto Rico. Some of those that

Fees are illegal	No Legal Mandate But Do Not Charge	Charge Fees
California	Alabama	Arizona
New York	Delaware	Connecticut
Kansas	Florida	Illinois
New Jersey	Georgia	Massachusetts
Iowa	Idaho (now)	Michigan
	Maine	Minnesota
	Maryland	Ohio
	Nebraska	Oregon
	New Mexico	
	Tennessee	
	Vermont	
	Wyoming	
	Puerto Rico	

charge fees are Arizona, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, Ohio and Oregon even though some of these states say athletics participation is a right and not a privilege.

Case Law

Alexander v. Phillip, et al. 254 p. 1056-1059, (1927).

Attorney General v. East Jackson Public Schools, 373 N.W. 2d 638 (Mich. 1986).

Bond v. Ann Arbor School District, 178 N.W. 2d 484 (1970).

Florida High School Activities Association v. Bradshaw, 369 So 2d. 398 (Fla Dist. Ct. App. 1979).

Florida High School Activities Association v. Thomas, 409 So 2d. 245 (Fla. Dist. Ct. App. 1982).

Granger v. Cascade County School District no. 1, 499 P, 2d 780 (1972).

Gulf South Conference v. Boyd, 369 So. 2d 553 (Ala. Sup. Ct. 1979)

Hartzell v. Connell, 35 Cal.3d 899; 201 Cal. Rptr. 601, 679 P.2d 35 (Apr. 1984).

Kelly v. Metropolitan County Bd. of Ed. of Nashville, etc., 293 F. Supp 485 at 493, (1968).

Moran v. School District #7, Yellowstone County, 350 F. Supp. 1180 (D. Mont. 1972).

Pacheco v. Sch. Dist. No. 11 El Paso County, 463 P. 2d 935 (1970).

Paulson v. Minidoka County School District no. 3331, 463 P. 2d 935 (1970).

Smith v. Crim, 240 S.E. 2d 884 (Ga. 1977).

Stone v. Kansas State High School Activities Ass'n, 761 P. 2d 1255 (Kan. App. 1988).

Other legal references

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SSLASPA Research Grant Proposal

In an attempt to support research or instructional innovation in the area of sport law, the Society for the Study of Legal Aspects of Sport and Physical Activity (SSLASPA) is providing funds not to exceed $500 to assist in this project. Proposals for these grants will be subject to a blind peer review and awarded on a competitive basis. Applications for the SSLASPA Research Grant should submit four copies of the completed proposal to _____ by _____.

ELIGIBILITY

Any current member of SSLASPA who has been a member for two consecutive years is eligible to receive a SSLASPA Research Grant. Members receiving the Award will then be ineligible to receive the award again for two years.

USE OF GRANT:

Funds from the SSLASPA Research Grant program are to be used to complete implement and evaluate the project and may include expenses incurred through student labor, data analysis, mailings, and/or supplies.

CRITERIA FOR SELECTION:

The following criteria will be used to judge the merits of each proposal:

1. The project should have clear rationale and a set of well defined objectives.
2. The project should demonstrate originality.
3. The project should add to the body of knowledge or improve instruction.
4. Awards are made contingent upon the agreement of the grantee to present at a subsequent SSLASPA Conference and to submit an article based on the research for publication in the Journal of Legal Aspects of Physical Activity.

METHOD OF SELECTION:

The Grant and Foundations Committee will utilize the above criteria to review and evaluate all proposals submitted. Final approval for the research project to be funded will be made by majority vote of the Grant and Foundations Committee. One grant will be awarded each year unless no proposal meet the criteria. The grant will be announced and presented at the SSLASPA Conference.

METHOD OF APPLICATION:

The proposal should include:

A. Cover page: The cover page should be prepared in accordance the sample provided.

B. Project abstract: A concise summary of the project (limit to one page).

C. Narrative: The narrative of the project should conform to the following outline.

   1. The project rationale—should provide a clear statement of the problem being addressed. Include summary of current research and development and selected references.
   2. The project objectives—should present clear statements of what the project is intended to accomplish.
   3. The project methods—should include the process used to accomplish the objectives.

D. Budget page: A complete list of all items and resources needed for the project should be prepared in accordance with the sample provided.