

◆ PTA and the LAW ◆

A Publication of the Montana PTA

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This booklet has been designed to help you understand the laws that govern or otherwise affect your PTA or PTSA local unit or council. Your PTA is governed and regulated by the same laws that affect other nonprofit organizations in the State of Montana. If your PTA is tax-exempt, it is also subject to federal laws governing 501(c)(3) organizations. It would be impossible for this booklet to cover every possible state and federal law that might possibly govern or affect the activities of your PTA. Instead this booklet describes some of the laws that are most likely to affect your activities. In addition, this booklet provides only basic information about the laws it covers. It is not intended to provide you with legal advice about any particular circumstance. It is intended to provide you with only general information about the law. To fully answer a question or concern, or to fully understand the implications of a law affecting your PTA, you may need additional information. If you have a specific question or concern, contact the Montana PTA Office for help at (406) 628-9007, P.O. Box 1269, Laurel, MT 59044, or ptamontana@rbbmt.org.

THE NATURE OF YOUR PTA

Purpose

The main purpose of a PTA is to serve the needs and desires of its members in promoting the health, welfare, safety, and education of children and youth in home, school, community, and places of worship.

Membership Organization

A PTA is a self-governing membership organization. Anyone can become a member of a PTA. There is no requirement that members have children in school.

Place of Formation

A PTA can be formed any place there is a genuine interest in helping children. This can be in an apartment complex, an office building, an industrial plant, a shopping center, or a senior citizen's residence. A PTA can also be formed, under the right circumstances, in conjunction with special community-wide, children-oriented programs or projects.

Form of Entity

If you are a PTA, you have already held an organizing meeting at which your group voted to affiliate with the Montana PTA, set its membership dues, (at least \$6.00 per member must be sent to the MPTA as affiliation fees) and enrolled its charter members (a minimum of 25 members are recommended to charter). After the members were enrolled, they elected officers who completed a "Montana PTA Local Unit/Council Officer Reporting Form" and executed a "Montana PTA Membership Application." The officers also selected additional persons to serve on the board of directors of the new PTA. Your PTA is not automatically recognized as a nonprofit corporation, nor is it automatically tax-exempt. It must take formal steps to become a state nonprofit and to qualify as exempt from federal and state income taxes. For reasons that are discussed in the section of this booklet on incorporating as a nonprofit, it is best to establish your PTA as a nonprofit corporation under state law and to establish your PTA as a tax-exempt organization under federal law. These topics are discussed in more detail in the section of this booklet on qualifying as a tax-exempt organization.

Cooperation with Schools

A PTA usually provides services to a school community and students in that community, and PTA members usually work closely with school principals, teachers, and staff. However, this relationship is one of a private organization (the PTA) working with a public organization (the school district). In other words, the PTA works within the school community but is not part of the school or the school district.

Not a "School-Related Organization"

A PTA is not what is sometimes referred to as a "school-related organization." It is important for all PTA directors, officers, and members as well as the staff and administrators of school districts to understand and appreciate the difference between a PTA and a school-related organization

because the laws governing schools and school districts are very different from the laws governing private, nonprofit corporations. The laws governing schools and school districts are not covered in this booklet.

WHAT IT MEANS TO BE A NONPROFIT CORPORATION

Legal Issues

“Non-Profit”, as defined by state statute, means the organization has no shareholders. Shareholders share in the profits of an organization. The legal definition of “Non-Profit” has nothing to do with the concept of making a profit. Rather, when a non-profit organization realizes a profit, which is an excess of income or revenue over expenses, the legal definition of a non-profit organization requires the profit to stay with the non-profit. The income is not distributed to any shareholders through dividends.

Advantages

As noted above, it is not necessary for your PTA to be a nonprofit corporation. However, becoming a nonprofit corporation has many advantages for the PTA and its members, including the following:

- Enhanced Public Image. Corporations are viewed as stable, long-lasting organizations. Nonprofit corporations, in particular, have a very favorable image in the eyes of the community. Therefore, forming a nonprofit corporation can enhance your stature within the community.
- Protection from Liability. Under most circumstances, a corporation insulates directors, officers, and members from personal liability for actions taken on behalf of the corporation. For example, the PTA itself, and not its directors, officers, or members, is liable for any debt incurred or other obligation assumed in the name of the PTA. In contrast, if your PTA is not incorporated, any individuals acting on behalf of the PTA could be personally liable for the PTA's debts and obligations. However under Montana law, volunteers serving a non-profit are provided addition immunity protection for their acts.
- State Tax Exemption. A nonprofit corporation can qualify for exemption from state income taxes.

First Step to Federal Tax-Exempt Status

Only a nonprofit corporation can qualify as a federal tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. The advantages of being a 501(c)(3) organization are discussed in the section of this booklet on “Qualifying as a Tax Exempt Organization”, page 5.

Perpetual Existence

Corporations can have perpetual existence. Thus, even if individuals associated with the organization, such as its founder, its officers or directors, decide to move on, the organization itself will continue on to serve the purposes for which it was formed. Because of these advantages, the Montana PTA requires every local unit and council to incorporate as a non-profit corporation.

Responsibilities

You need to keep in mind, however, that certain responsibilities attach to establishing and maintaining a corporation. These responsibilities are addressed in more detail in various other sections throughout this booklet. Briefly, they include:

- Required Paperwork. A nonprofit corporation must file annual reports with the Montana Secretary of State. In addition, the corporation must take minutes of all board and general membership meetings and maintain corporate books and records, including a minute book. Certain records must be available for public inspection. Although these record-keeping tasks are not difficult, they can be time-consuming, especially for smaller nonprofits run by volunteers who may not have the time necessary to properly maintain the corporation's books and records.
- Time and Energy. Corporations must also hold at least one annual board/general membership meeting, will generally hold monthly board meetings throughout the year, and often will hold regular meetings of board committees and task forces charged with certain projects. The larger the organization, the more complex its activities, and the greater the amount of time that is required to keep it going. On the other hand, many smaller nonprofits have working boards whose directors must spend a fair amount of their own time helping to raise funds for the organization and run the organization's programs and activities. No matter what the size of the organization, all directors and officers must spend a fair amount of time reviewing materials and considering issues thoughtfully in order to provide reasoned direction to the organization.

HOW TO BECOME A NONPROFIT CORPORATION

Filing the Articles of Incorporation.

It is very easy to become a nonprofit corporation. You must file the original and one copy of an *Articles of Incorporation for Domestic Nonprofit Corporation* (Form dn-1) with the Montana Secretary of State's office along with the correct filing fee. This form can be obtained from the Secretary of State's Office or over the Internet at www.sos.state.mt.us. The Secretary of State will send a letter of acknowledgement once the incorporation document has been received in their office. This document should be placed in a "Permanent Records" file/folder in a safe place.

Incorporator

Before you file your Articles, you need to identify an incorporator.

- What is an incorporator? The incorporator is the person who signs the Articles of Incorporation. Any corporation or any person over the age of 18 can serve as the incorporator. The Articles must set forth the name and address of the incorporator.
- Is the incorporator subject to liability? The incorporator is liable if any false statements are made in the Articles. It is very unlikely that your Articles would contain any false statements. Therefore, the risk of assuming liability for what is stated in the Articles is virtually nonexistent. The incorporator may also be liable if it enters into contracts or

assumes other obligations on behalf of the organization before it files its Articles. If for some reason the organization never files its Articles, the incorporator will be personally liable for any actions it took on behalf of the organization. Even if the organization does file its Articles, the incorporator is still personally liable for all actions taken before the date of filing unless, after the Articles are filed, the organization passes a specific resolution agreeing to assume liability for actions taken by the incorporator before the date of filing.

In short, there is no liability attached to being an incorporator, unless the Articles contain a false statement or the incorporator acts on behalf of the organization before the Articles are filed, and the corporation does not later ratify those actions as its own.

Registered Office and Agent

The Secretary of State needs a contact person to whom it can send official notices. This person is called the "registered agent." The registered agent can be an individual or entity. The address where the registered agent receives official notices is called the "registered office."

Organizational Meeting

After the organization files its Articles of Incorporation, it must hold an organizational meeting. There is no deadline under state law for holding this meeting. However, it is best to hold your organizational meeting within a month after filing your Articles. A majority of the initial directors should call the meeting by providing at least 3 days notice to all of the initial directors. There are at least four tasks to accomplish at the organizational meeting:

- Adopt Bylaws. At the organizational meeting, most newly formed nonprofit organizations adopt their Bylaws. HOWEVER Your PTA should have already agreed to abide by the Montana PTA Uniform Bylaws for Units or Councils. Therefore, your PTA does not need to do this again at its organizational meeting. If for some reason your PTA has not already adopted the Uniform Bylaws, it should do so at the organizational meeting. Bylaws govern the procedures for running meetings of the PTA and address other matters that pertain to the governance of your PTA. Unlike the Articles of Incorporation, the Bylaws are not filed with the Secretary of State. The Montana PTA will provide each unit and council with the applicable Uniform Bylaws.
- Appoint Successor Directors. In most organizations, the initial directors are replaced by successor directors at the organizational meeting (although the initial directors are not precluded from being appointed as successor directors). Since your PTA will have already appointed directors prior to becoming a nonprofit, these directors should be designated as the successor directors (who, again, maybe the very same people designated as initial directors in the Articles).
- Appoint Officers. Under both the Uniform Bylaws and State Law, your PTA must have at least four officers: a president, vice president, secretary and treasurer. Under state law, any two or more of these offices may be held by the same person, except for the offices of president and secretary, which must always be held by different people. Again, since your PTA will have already designated its officers, you need only ratify this designation at your organizational meeting.

- **Legal Matters.** After appointing interim directors and officers, the organization should pass a resolution ratifying any actions taken by the incorporator before the Articles were filed. It should also authorize any additional contracts necessary to carry on its business. Remember that at least 2 officers must execute all contracts and other legal documents on behalf of your PTA and that one of the signing officers must be the president. The interim board should also pass a resolution authorizing the PTA to apply for a federal Employer Identification Number (EIN), which the PTA will need in order to open a bank account and apply for tax-exempt status.

MAINTAINING CORPORATE STATUS

Annual Report

In order to maintain your status as a nonprofit corporation, you must file an annual report with the Secretary of State. The Secretary of State mails the notice to file the report to the registered agent for your PTA. The report asks for the current names and addresses of each director and officer of the PTA. The report must be completed and returned to the Secretary of State by the indicated due date. There is a nominal fee for processing the report.

Administrative Dissolution

If you do not file the annual report in a timely manner, your PTA can be "administratively dissolved" by the Secretary of State, meaning that you will no longer be a nonprofit corporation. If you are administratively dissolved, there are ways to get "reinstated." If you receive a notice from the Secretary of State that your PTA has been (or is at risk of being) administratively dissolved, contact the Montana PTA immediately. If you are administratively dissolved and/or you fail to get reinstated, you will not only cease to exist as a nonprofit corporation under state law, you will also fail to qualify as a tax-exempt organization under federal law.

OBTAINING AN EMPLOYER IDENTIFICATION NUMBER

Plan on applying for federal tax-exempt status, you must have a federal employer identification number (EIN), which is the corporate equivalent of a personal social security number. You will also need an EIN to open a bank account. To get your EIN, you send the IRS a completed "Form SS-4." There is no processing fee. You can obtain a Form SS-4 and instructions from the IRS or over the Internet at www.irs.gov.

QUALIFYING AS A TAX-EXEMPT ORGANIZATION

General Considerations

- Your PTA is not automatically exempt from paying federal taxes just because it is incorporated as a nonprofit corporation under state law. Your PTA must go through a separate process of applying for tax-exempt status through the Montana PTA.
- The Montana PTA was recognized as an educational non-profit organization in 1967 under

IRS code section 501 (c)(3), thereby exempting the Montana PTA from income tax liability.

- In 1996, the Montana PTA was granted a blanket group exemption for all Montana PTA-recognized local units and councils. Montana PTA local units and councils apply once for addition to the “exempt group” with the Montana PTA. Then every year, each unit and council must make a report on gross earnings to the Montana PTA on the Montana PTA Dues Remittance Form. The Montana PTA then reports the status of all tax-exempt Montana PTA units and councils to the IRS on a yearly basis.
- Along with reporting yearly, the Montana PTA and each unit and council must closely follow the PTA Vision, Mission, Values and Purposes, basically furthering the health, safety, welfare and education of children, in order to maintain the tax-exempt status of all Montana PTA units.
- The Montana Department of Revenue recognizes all units included in the Montana PTA group tax exemption as exempt from Montana income taxes.

Reasons to Apply for Tax-Exempt Status:

- To Avoid Taxes. You do not need to apply for tax-exempt status if your income is less than \$5,000 a year. In that case, you are automatically exempt from paying taxes on your income. If you anticipate that your income will exceed \$5,000 a year, you should apply for tax-exempt status.
- To Attract Donations. You will probably want to apply for tax-exempt status as a Section 501(c)(3) organization if you intend to engage in fund raising activities. Donors can take a charitable deduction for donations they make to a tax-exempt organization. Thus, if you are tax-exempt, you become a more attractive option for donors who not only want to support a good cause but also want to use their donation to reduce their own tax liability. *Also, many grant-making organizations, both public and private, will only make donations to organizations that are qualified as tax-exempt.*
- To Conduct Gambling: Activities. A 501(c)(3) nonprofit may conduct raffles and bingo without a county permit (under certain conditions – see Gambling Activities). Minors may sell raffle tickets for charitable activities. *Minors may not play bingo for prizes or cash.*
- Prohibited Activities. In order to qualify as a tax-exempt organization, you must not engage in certain prohibited activities: (1) self-dealing, referred to as "private benefit" and "private inurement"; (2) partisan political activities; and (3) substantial lobbying. You must refrain from engaging in these activities or else you either will not qualify for or will lose your tax-exempt status.
- Private Benefit and Private Inurement. The prohibition on self-dealing under federal law is reflected in the Montana PTA Uniform Bylaws Article III, paragraph (f) provides: "No part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, directors, trustees, officers, or other private persons except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions. In furtherance of the purposes set forth in Article II."

As noted above, self-dealing is often called private benefit or private inurement. These are distinct but related concepts. Private benefit occurs when an organization serves only a

limited group of people, usually affiliated with the organization itself, rather than the public at large. For example, you would not qualify as a public charity if you limited your purpose only to children of PTA members. Private inurement occurs when someone receives a personal benefit from the organization by virtue of his or her involvement as an "insider." An insider is someone that has the power to control the organization, such as a director or officer.

- An example of private inurement would be if your organization entered into a catering contract with a director's catering business without soliciting bids from other caterers to determine whether the organization could obtain a better deal elsewhere.
- Another example of private inurement is loaning PTA funds to an officer or director. Such loans are also prohibited under state law.
- Another example of private inurement is, upon dissolution of your PTA, distributing its assets to the directors or officers. In order to qualify for tax-exempt status, you must agree that upon dissolution your assets will be distributed only to another 501(c)(3) organization.

If your PTA engages in private benefit or private inurement, it can fail to qualify for or will lose its tax-exempt status. Your PTA, and the persons who benefit, can also be subjected to monetary sanctions (fines).

- Political Activities. Federal law prohibits a 501(c)(3) organization from engaging in any activities in support of or in opposition to any candidate for public office. This prohibition is reflected in Article III of the Montana PTA Uniform Bylaws, which states in Section I, paragraph (c): "The organization or members in their official capacities shall not directly or indirectly participate or intervene (in any way, including the publishing or distribution of statements) in any political campaign on behalf of, or in opposition to, any candidate for public office; or devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise."

This means that there can be no connection between your PTA and any political party or candidate for public office, including candidates for school board positions. However, this does not mean that you must refrain from all political activities or from carrying on efforts concerned with legislative issues or official actions that threaten the well-being of children and youth. In addition to federal prohibitions, state law prohibits the use of school facilities to support or oppose a ballot issue or election campaign. State law also prohibits school facilities to be used by any group to distribute literature on behalf of ballot measures. This prohibition includes sending support/oppose information home with students or publishing such information in the PTA newsletter if the newsletter is sent home with the students. However, such information can be mailed to PTA members.

- Examples of Prohibited Activities:
 - You may not make contributions to candidates for public office (including "in kind" donations such as staff time or use of facilities)
 - You may not publish or distribute statements in a political campaign

- You may not endorse a candidate
- You may not make contributions to any Political Action Committee (PAC)
- Examples of Permitted Activities:
You may provide information of an educational or nonpartisan nature, even at school facilities, without violating state or federal law. For example:
 - You may sponsor a candidate forum to which all candidates have been invited and are given equal "air time" which is moderated by an impartial person
 - You may distribute a candidate questionnaire if the questions are framed without bias and the responses are not accompanied by any commentary
 - You may participate in voter registration and other "get out the vote" efforts so long as they are not directed towards assisting a particular candidate for public office
 - You may hold meetings to determine your PTA's support of or opposition to ballot issues or advocate its position to your members
- Use of Internet Technology. Some school districts provide PTAs with email addresses and World Wide Web pages. PTAs using technology provided by school districts must comply with all the same restrictions as the district when using the technology (for example, a PTA may not promote a levy on its district-sponsored web site or home page.)
- PTA Members in Public Office. An officer or director of a PTA is not prohibited or prevented from running for or holding a public office. However, to ensure the nonpartisan requirements placed on the PTA, the member must, when campaigning for office or serving in the office, sever his/her identity with PTA as it relates to that public office.

Substantial Lobbying

Lobbying elected officials is not absolutely prohibited under federal law. However, as a Section 501(c)(3) organization, you can engage in lobbying only to an "insubstantial" degree. What is "insubstantial?" Although there is no recognized formula for what constitutes "substantial" versus "insubstantial" lobbying, it is generally recognized that an organization that spends up to 5% of its resources on lobbying is not engaged to a substantial degree in this activity. Schedule A to the IRS Tax Form 990/990EZ (discussed below) also provides an opportunity for your PTA to demonstrate that it is not devoting more than 5% of its resources to lobbying activities.

- Examples of Lobbying Activities:
 - Advocating the adoption or rejection of specific legislation
 - Communicating with a legislator (or his or her staff) in regards to specific legislation
 - Using the public to contact a legislator (or staff) with respect to specific legislation
- Examples of Activities that do not Constitute Lobbying:
 - Publication of position papers on issues that do not address pending or proposed legislation
 - Communication to your members regarding pending legislation as long as you are not asking your members to engage in grass-roots lobbying
 - Nonpartisan analysis, study or research that has a demonstrated factual foundation and is presented in an independent and objective way
 - Responding to a legislator's request for advice or assistance, even with respect to

- pending legislation
- Communications that relate to pending legislation that might affect the existence, duties or powers of your organization
- Routine communications with legislators or governmental officials

MAINTAINING TAX-EXEMPT STATUS

In order to maintain tax-exempt status, your PTA must:

- Continue to further its charitable purpose (the health, safety, welfare, and education of children) and not engage to a substantial degree in any non-charitable activities
- Abide by the prohibitions on political activities, lobbying and private benefit/inurement.

If the IRS audits your PTA and determines that you have not abided by these requirements; it can revoke your tax-exempt status, assess fines, and/or require the PTA to pay back taxes on income earned. In conducting an audit, the IRS will review your expenditures to determine whether you have operated primarily in furtherance of your charitable purposes. For this reason, it is important for your PTA to keep records detailing the purpose of all its expenditures.

FEDERAL TAX MATTERS

Information Returns

Even if your PTA qualifies as a tax-exempt charity and therefore does not pay taxes on its income, it is required to file annual "information" returns with the IRS, using either Form 990, Form 990-EZ (a short-form version of the Form 990), or Form 990-N (e-postcard) by the 15th day of the fifth month following the end of your fiscal year-end (which may or may not coincide with a calendar year). The 990 form is an "information return," not a "tax return." The information contained in a 990 allows governmental agencies such as the IRS and state charity regulators to scrutinize the activities of a nonprofit. The form also allows the public to learn about the activities and finances of a nonprofit organization.

The Pension Protection Act of 2006 enacted critical changes in reporting requirements for non-profit organizations. For tax years beginning after December 31st, 2006, all PTA units must report their financial activity to the IRS. Which 990 form your unit needs to file depends on your gross receipts.

- If your gross receipts are less than \$50,000 you need to FILE a **990-N**. This is effective for the 2010-11 fiscal year. For most this is the year running approximately July 2010 through June 2011. So the first time this form will need to be filed is November 15, 2011 (or your applicable due date).
- If your gross receipts are between \$50,000 and \$100,000 you need to FILE a **990-EZ**.
- If your gross receipts are over \$100,000 you do need to FILE a **990**.

Form 990-EZ may be used by any organization whose gross annual receipts were between \$50,000

and \$100,000 and whose total assets were less than \$250,000. Nearly all PTAs that complete either Form 990 or 990-EZ must also complete a Schedule A form. Some PTAs will also be required to submit a Schedule B form. To determine if your PTA is required to complete a Schedule B, see the PTA "Money Matters" Quick Reference Guide.

Failure to file a Form 990, 990-EZ or 990-N, when required, may result in penalties of up to \$20 per day, up to the lesser of \$10,000 or 5% of the organization's annual gross receipts. For help on completing these returns see the PTA "Money Matters" Quick Reference Guide.

Payment of Unrelated Business Income Tax (UBIT)

Being tax exempt does not mean you will never pay taxes. It means you will not pay taxes on income derived from your charitable activities. If your organization engages in activities unrelated to its charitable purpose, it must pay taxes at standard corporate rates on income derived from those unrelated activities (called "unrelated business income tax" or UBIT). Unrelated business income in excess of \$1,000 annually is subject to UBIT and must be reported on Form 990-T.

- Income Subject to UBIT. The IRS's definition of unrelated business income subject to UBIT is income (1) derived from a business (2) that is regularly carried on and (3) is unrelated to the organization's charitable purpose. A business is any activity conducted for the primary purpose of generating revenue from the sale of goods or services. A business is regularly carried on if it constitutes an ongoing part of the organization's activities. Thus, for example, a once-a-year fund-raising event is not a regularly carried on business activity. A business is unrelated to the organization's purpose if the primary objective is to make money, even if the income generated from an activity is used in furtherance of your charitable purposes. For example, if you sell advertisements in your PTA newsletter, this income is likely subject to UBIT even if you spend the income to further a charitable purpose.
- Exceptions to Paying UBIT. Under certain circumstances, what would otherwise be subject to UBIT is not subject to taxation. For example, UBIT is not payable on income generated through an activity undertaken by volunteers. Nor is UBIT payable on income generated from the sale of donated merchandise. A business carried on primarily for the convenience of directors or members is also not an unrelated business subject to UBIT. So-called "passive" income, such as income generated through investments, is also not subject to UBIT.

Applying the definition of UBIT to a particular activity and determining whether an exception applies can be complicated. Two general rules of thumb to keep in mind are that any income derived from an activity that does not directly further your charitable purpose could be taxable but this income can be exempted from UBIT if the activity is performed by volunteers. If you have any questions about whether your PTA is engaging in activities that may be subject to UBIT, you should contact the Montana PTA.

IRS Audits

The IRS uses three methods of audit. It may audit the organization by mail, in which case the

organization will mail the IRS any information requested. It may conduct an audit at its own offices, in which case the organization must bring to the IRS offices all requested information. Or, it may conduct the audit at the organization's offices. All audits are initiated by an audit letter that specifies the method of examination and the records you will need to assemble. If you receive an audit letter, you should immediately contact the Montana PTA. In order to properly respond to an audit, your PTA must maintain detailed and accurate records of all its activities. You should keep records of all expenditures and expenses for at least ten years.

CHARITABLE CONTRIBUTIONS TO YOUR PTA

Contributions to Section 501(c)(3) organizations are subject to two important substantiation requirements, discussed below.

Substantiation of Contributions Worth \$250 or More

- If your PTA receives a charitable contribution of \$250 or more in cash, goods or services, you must provide the donor with written substantiation of the contribution. No particular form is required. The substantiation may be in the form of a letter, postcard or other written document. A cancelled check will not satisfy the substantiation requirement. If the contribution is cash, the written substantiation should specify the amount received.
- Individual payments over time are generally treated as separate contributions and are not aggregated for the purpose of applying the \$250 threshold. However, if someone makes a pledge of \$250 or more and decides to make payments on the pledge over time, the payments should be aggregated.
- If you receive in-kind donations, you should never place a value on the goods or services for the donor. Instead, your written substantiation should describe the goods or services and the donor can place his or her own value on the donation. For this reason, you should provide written substantiation for all in-kind donations because it is not up to you to determine whether the donation is worth more or less than \$250. However, you will need to place a value on the in-kind donation for your own internal record keeping purposes.
- In no instance should you knowingly provide false information about the value of a donation. By doing so, you subject yourself to liability for aiding and abetting an understatement of tax liability.

Substantiation of Quid Pro Quo Contributions

If your PTA receives a donation of \$75 or more in exchange for something of value (a "quid pro quo" contribution), you must notify the donor how much of the donation can be claimed as a charitable deduction. Only the portion of the donation exceeding the value received is deductible. For example, if your PTA holds a fund-raising dinner and charges \$100 per ticket and the dinner has a value of \$40, you must notify everyone who purchases a ticket that they can claim a charitable deduction of only \$60. You must provide this information to the donors in writing. It can be written on the ticket itself or on a separate piece of paper. The only exception to documenting quid pro quo contributions is for small items of low value, such as key chains or pens.

Failure to make the required disclosure can result in penalties of \$10 per contribution up to a maximum of \$5,000.

STATE AND LOCAL TAX MATTERS

Periodic Fundraising Activities

A PTA that qualifies as tax-exempt under federal law, as a Section 501(c)(3) is also exempt from paying Montana Income Tax on income generated through periodic fundraising activities which do not constitute the operation of a regular place of business.

GAMBLING ACTIVITIES

Raffles

Under Montana State Law, raffles are considered to be gambling activities. As such, these activities are regulated by the State Department of Revenue. According to state statute:

1. Nonprofit organizations are not required to obtain a county permit to conduct a raffle
2. A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle if the proceeds of the raffle are used to support charitable activities
3. A group that has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following completion of the raffle
4. The sale of raffle tickets is restricted to events and participants within the geographic confines of the state
5. The proceeds from the sale of tickets for a raffle conducted by a nonprofit organization may be used only for charitable purposes or to pay for prizes. Proceeds may not be used for the administrative cost of conducting the raffle
6. The value of prize awarded for an individual ticket for a raffle conducted by a nonprofit organization may equal or exceed \$5,000 if the prize is in the form of tangible personal property or real property the fair value of which has been certified in writing by a licensed appraiser. If the value of the prize is less than \$5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property

Bingo

Under Montana State Law bingo is considered to be a gambling activity. Bingo is regulated by the State Department of Revenue. According to state statute:

1. An organization granted a tax exemption as a 501(c)(3) organization on or before January 15, 1989 is exempt from taxation and the bingo permit fee
2. An organization granted exemption after this date is exemption from taxation but must pay one-half of the permit fees
3. Regardless of dates in 1 and 2 above, the nonprofit organization must apply to the Department of Revenue for a permit to conduct charitable live bingo.
4. Minors (a person under 18 years of age) may not participate in a bingo game that awards

prizes.

Record Keeping and Use of Funds

According to state statute, your PTA must maintain records relating to the activity for at least one year. These records must show, at a minimum, the gross revenue from each activity, an itemization of expenses, and how the PTA used the revenues. All revenues, after deducting expenses, must be devoted solely to the purpose of the PTA.

Auctions

Auctions do not constitute a gambling activity. Under state law, it is nevertheless generally unlawful for any person to act as an auctioneer without a license. However, there is an exception to this general rule for auctions conducted by or on behalf of a charitable organization if the person conducting the auction receives no compensation.

CONTRIBUTIONS MADE BY YOUR PTA

Donations of Equipment to Districts

Your PTA should not donate equipment or material to any school or school district. Once you put yourself in the chain of title of property or equipment, you subject yourself to liability for any defects in the property or equipment.

Grants of Money to Districts

You may make a grant to a school district that allows the district to purchase equipment or material itself. A grant may be made for other purposes as well. In connection with any grant of money to a school district, your PTA should take the following steps:

1. Verify the need for the grant
2. Reach an understanding with the district regarding the terms of the grant
3. Commemorate your understanding in a written agreement that is signed by the PTA and the district. At a minimum, the agreement should specify: (a) the parties; (b) the amount of the grant; (c) the purpose for which the grant may be used; (d) the date by which the grant funds must be expended; (e) that any funds not utilized for the grant purpose by the stated date must be returned to the PTA.

A sample Grant Letter is provided on the Montana PTA website or from the Montana PTA Office.

PROPER HANDLING OF PTA FUNDS

Control of PTA Funds

All funds generated by your PTA belong to and are under the control of your PTA. These funds must be deposited in a bank account in the name of your PTA - not in a personal bank account or

in a school safe, cash box, car, or file cabinet. Funds generated by your PTA must be administered not only pursuant to the Uniform Bylaws and the Standing Rules of the PTA, but in accordance with state and federal regulations governing the funds of nonprofit, tax-exempt organizations.

Bank Accounts

There are several types of bank accounts into which your PTA may deposit funds. Your PTA should review the available options and choose the account that is most advantageous to your PTA. If at all possible, your PTA should open an interest earning account. Investing your funds is responsible stewardship and prudent money management. The interest earnings are not taxable and do not affect either the non-profit or the tax-exempt status of your PTA.

Reserve Accounts

Another principle of prudent money management is to build up a reserve account to (a) provide funds for unanticipated and unbudgeted expenses; (b) provide funds for emergencies; and (c) allow the organization to be financially and fiscally responsible at all times. Generally, it is advisable to build a reserve account equal to one (1) year's operating expenses.

Restricted Funds

An organization may set aside a portion of its income or reserves for a special purpose or purposes (for example, a scholarship program) or to enable it to make an expensive purchase (for example, new software or hardware). Establishing a "restricted fund" does this. In order to establish a restricted fund, the board of your PTA should pass a motion that defines (a) how revenue into the fund will be generated, and (b) the manner in which the funds may be spent. The restricted fund should then be approved at a general membership meeting. Any funds that have been restricted, including grant funds that have been received but are subject to specific conditions, must be reported on the monthly treasurer's report.

Financial Review

An annual review of the financial books and records of your PTA is required by the Uniform Bylaws. One of the most important responsibilities of an organization's board is to assure itself and the membership that the finances of the association have been properly handled. Failure to audit the books can be, by itself, evidence of improper management of any organization. The Montana PTA requires appointment of a financial review committee. A "Financial Management Checklist" and a sample Financial Review Report is provided in the PTA "Money Matters" Quick Reference Guide and Montana PTA website.

Missing Funds

Occasionally, a unit may discover (or suspect) that funds are missing. If that should happen, you must take the following steps:

1. Advise the Montana PTA of your discovery (or suspicion)
2. Immediately conduct an audit
3. Immediately act on the audit findings. If the audit shows that funds were improperly handled or stolen, your PTA board has the legal obligation to take all reasonable steps to

recover those funds. The Montana PTA can outline the various options available to your PTA and counsel you on the appropriate steps to take.

5. Document all steps you take, either in the minutes of board meetings or in a separate report
6. Report to the membership the audit findings and the steps you have taken to recover any missing funds. The board is fully accountable to the membership for administering the funds of the organization.

RECORD KEEPING

Need to Safeguard Records

Your PTA must protect and preserve the documents and records that relate to its legal existence and operation. Many of these documents are subject to public inspection. Even if not subject to public inspection, these records are essential to the operation of your organization, and if you are audited, will be subject to production. To truly safeguard your PTA's organizational records, you should keep them in a safe deposit box at a bank. If that is for some reason not possible, the records should be maintained in a fireproof safe at some other location. Most organizations maintain their corporate records in a three-ring binder (or several binders) with tabs for different categories of documents.

Records You Must Maintain

The following documents need to be maintained by your PTA. Those items in ***bold and italics*** are subject to public inspection.

Evidence of Corporate Status

- ***Certificate of Incorporation***
- ***Annual Corporate Report***

Evidence of Tax Exempt Status

- Copy of Application to the Montana PTA for inclusion in the Montana PTA Group Tax Exemption

Other Federal Tax Matters

- ***Letter assigning Employer Identification Number (EIN)***
- ***Copies of filed Informational Returns 990, 990-EZ or 990-N***
- ***Form 990-T***
- All correspondence with the IRS

Internal Governance Documents

- Copies of the current Uniform Bylaws
- The unit/council Standing Rules, (a template for the creation of Standing Rules is available from the Montana PTA Office and on the Unit Leadership Information CD)
- Unit/council policies or written procedures
- Meeting Minutes
- Membership Lists – these lists must be maintained according to state law

Financial and Insurance Matters

- Copy of current insurance coverage information
- Bank Signature Cards
- Grant Agreements

Other Documents

- List of equipment and furniture owned by organization

RECORD RETENTION SCHEDULE

A timetable for the retention of PTA records is available in an Appendix to the PTA “Money Matters” Quick Reference Guide.

INTELLECTUAL PROPERTY MATTERS

Generally

Your nonprofit status does not exempt you from liability for infringement of copyright, trademark, patent, trade secret, or other intellectual property rights. You must be aware of the existence of and regulations regarding copyrights and trademarks to avoid infringing another party's intellectual property rights, and you may also desire to protect certain intellectual property you have created. This section does not cover all intellectual property issues that you might possibly encounter; rather it is an overview of the issues you are most likely to need to know.

Copyright Use and Protection

Copyright protects an author's rights in original works of authorship that are fixed in a tangible medium of expression. Copyright covers both published and unpublished literary, dramatic, musical, artistic, and other works, provided these works contain sufficient literary or pictorial expression. Copyright does not protect facts, ideas, systems, or methods of operation. Generally, the owner of a copyright has the exclusive right to do and to authorize others to do the following:

- Reproduce the work
 - Prepare derivative works
 - Distribute copies of the work either free of charge or for sale
 - Perform the work publicly
 - Display the copyrighted work publicly
- Copyright Ownership. The author or creator of an original work usually owns the copyright rights to that work unless the author has transferred (or licensed) those rights to someone else. Any transfer of rights must be in writing signed by the original owner of the copyright. There are other circumstances under which the author of a work may not own the copyright. For example, if you create a work in conjunction with another organization or individual you may be joint owners of the work, you may have no ownership, or you may

have complete ownership, depending on your relationship with the other party and whether you have entered into an agreement regarding ownership rights.

- Works for Hire. Unless there is an express written agreement to the contrary, an employer owns any work created by its employees within the scope of or related to the employees' work. This is called a "work for hire." When a non-employee is commissioned to create a work for your PTA, that work may also be a work for hire. Unlike with an employee, where the employer owns the work unless there is an agreement to the contrary, your PTA only owns a commissioned work if there is a written agreement that so provides.
- Use of Copyrighted Work. You can use materials that are copyrighted by the Montana PTA and National PTA since you are affiliated with them, provided that your use is consistent with any policies they may have and that you have an agreement to that effect. You may not reproduce, distribute, publish, or otherwise disseminate copyrighted information without permission, unless your use of the copyrighted information is a "fair use."
- Fair Use. Fair use of copyrighted material is likely to be found when some of the factors below are present:
 - Your use is a nonprofit, personal, or educational use, especially if your educational use is for face-to-face teaching
 - Your use is for criticism, comment or news reporting
 - The work you use is factual or fact based and is published
 - You only use a small amount of the copyrighted work, for example a short quote or sound bite as opposed to a significant portion of the work

Fair use is less likely to be found where your use of copyrighted material is commercial, you use a significant amount of the material, the work is unpublished or imaginative, or where your use avoids payment or competes with the author's use.

- Works in the Public Domain. You may use for any purpose, at any time, work that has entered the public domain, regardless of whether it was once registered. Copyrighted work enters the public domain when it is no longer copyrightable or its registration has expired. Whether a work has entered the public domain depends on many factors, including when and who created the work and whether that person or entity registered the work or updated the registration when it had the opportunity. Older works are less likely to be protected by copyright. However, due to changes in copyright law over the years, no simple rule can determine whether a work is in the public domain. You should always check a work's copyright status or get permission from its owner before using it if you are not certain whether copyright protection exists.
- Use of Music. When you are unsure whether a musical work is protected by copyright you should always take the precaution of requesting rights from the copyright holder. Authors and composers of copyrighted musical works have the right to collect royalties for the public performance of their works, including through radio stations, public displays, concerts, and even meetings. If you use copyrighted music at a meeting and it belongs to BMI, ASCAP, SESAC, or another licensing agent, you may need to pay a fee for permission to use the music unless your event fits into an established exemption. Your PTA can qualify for an exemption to paying licensing fees for copyrighted music if:
 1. No fee is paid to performers; and

2. (a) there is no admission charge; or
(b) all proceeds, after payment of expenses, are used for educational, religious, or charitable purposes.

You should read the exceptions narrowly. For example, a direct payment, a reimbursement of expenses, an honorarium or a gift could each be considered a fee paid to the performer. It is also possible that a meeting, workshop, or conference registration fee would be considered an admission charge. Also, the licensing agent may object to exempted performances in advance, in which case fees must be paid.

- Use of Audiovisual or Dramatic Works. Movies, television broadcasts, documentaries, newsreels, cartoons, videotapes, and other theatrical and audiovisual works are protected by copyright and their use is governed by the same rules that apply to other copyrights. You are permitted to show such works for face-to-face teaching in a classroom educational setting without the approval of the copyright owner. Otherwise, you must obtain permission. Showing a film, video or reproduction of a play for purely entertainment purposes before a large group is not a fair use and requires permission from the copyright owner whether or not you will charge a fee. It is your PTA's obligation to obtain permission, maintain current and valid licenses, and pay royalties in accordance with any audiovisual or dramatic works you use.
- Obtaining Permission to Use Music and Dramatic Works. Your public performance or broadcast of music requires permission from the copyright owner or licensing agent, which often requires permission from both the owner of the song and the owner of the copyright in the musical recording. Your public display or broadcast of audiovisual or dramatic works likewise requires permission from the copyright owner. Before copying an audiovisual or dramatic work you must obtain permission from the copyright holder. When obtaining permission to make copies you should be sure that your grant of permission (1) is written; (2) states the number of copies you may make; (3) addresses the length of time you may keep any copies; and (4) specifies any special uses that the copyright holder has authorized you to engage in. It is your PTA's obligation to obtain permission, maintain current and valid licenses, and pay royalties for any music or dramatic works you use.
- Trade and Service Mark Use and Protection. Trademarks are protected under federal and state laws. A trademark can be words, phrases, images, shapes, sounds, or other elements that might distinguish a product as belonging to or coming from a particular source. The first party to use a trademark in commerce has rights in that trademark. A service mark has the same legal status as a trademark but is the designation used for services provided, rather than commercial products sold. For example "Kleenex" is a registered trademark identifying tissues from the Kimberly-Clark, Corp., while "PTA"; "Parent Teacher Association," and "PTSA" are registered service marks of the National Congress of Parents and Teachers.
- Use of Another's Trade or Service Mark. You may not use a trademark or service mark without permission of the owner. As an organization affiliated with the Montana and National PTA your local organization can use national and state PTA marks without requesting permission for each use. You may not use the trademarks of organizations with

which you are not affiliated without first obtaining permission. However, you may be able to use a trademark for social commentary or educational purposes without obtaining permission.

CONTRACTS

Generally

In the ordinary course of its activities, your PTA will likely enter into a number of contractual arrangements including, for example, for the rental of equipment, the purchase of supplies, leasing a meeting hall, or hiring a band. Each time you enter into such an arrangement, you assume the responsibility of conforming to and abiding by all the terms and conditions to which agreed. Your legal obligation to live up to your end of the bargain - for example, to pay for the supplies or services you received - will not depend on whether your activity is a financial success or whether, in retrospect, you fully understood the terms of the contract. The law generally presumes that a party has read and understood the terms of any contracts it executes.

Written Contracts are Best

A contract does not have to be in writing to be enforceable. For example, if you make an oral promise to pay a band for playing at a special event and the band shows up and performs; you are legally obligated to pay the band for its performance. It is, however, often difficult to prove the existence or specific terms of an oral agreement. If, for example, you entered into a "handshake deal" to hire the band and the band fails to show up, it might be difficult for you to prove that the band ever agreed to do so in the first place. Also, unless agreements are in writing, the parties may forget what they promised to do. For example, you may believe you agreed to pay \$200 for 4 hours of music and the band may believe you agreed to pay \$250 for 3 hours of music. Written contracts are always better than oral agreements. Not only do they help the parties know at the outset what they have agreed to do but they serve as a guidepost if the parties later have a dispute over the terms of their agreement.

Common Contract Terms

Every contract is unique, depending on the parties, the subject matter, the timeline for performance, whether any conditions need to be satisfied before the contract is performed, and the remedies for nonperformance, to name just a few areas of potential difference. However, certain provisions are usually included in almost every contract. The following list provides you with a sampling of some of the more common contract provisions. It is not intended to be inclusive. Moreover, because every contract is unique, it is not intended as a blueprint. It is intended to give you only a general idea of what most contracts cover.

- Opening Paragraph. The first paragraph of the contract should identify the name of the contract, the full legal names of the contracting parties, and the date of the contract. After any term, you can insert a parenthetical that identifies an abbreviated form of the term that can be used for the rest of the contract. A common opening paragraph would read as follows:

“This Agreement for Services ("Agreement") is entered into this 5th day of July, 2008, by and between The Sugarwood Parent Teacher Association, a Montana nonprofit corporation ("PTA"), and Western Country Band, a Montana general partnership" ("Band").

- Recitals. Many contracts have what are called "Recitals" that recite the reasons why the parties are entering into the contract. The recitals are not part of the formal promises that the parties make. They just provide a context for the relationship. Not every contract has recitals and they are not required. Recitals in a contract to hire a band might read as follows:
 1. PTA is holding a fundraising dinner and auction on January 15, 2008. The theme of this event is "The Old West." PTA wants to provide live entertainment at the event that reflects this theme.
 2. Band performs Western music. Its repertoire includes historical tunes from the period when pioneers moved to the Western states. Band is available to perform on January 15, 2008.
- Mutual Promises. The essential part of any contract is a description of the duties and obligations of the parties: who is doing what and when. The description of duties should be as specific as necessary to cover all the terms of the agreement. Continuing with the band example, a contract might describe the duties of the PTA and Band as follows:
 1. Band will perform at the Civic Center on January 15, 2008. Band will arrive at 5:00 p.m. to set up its equipment. Band will play live music from 6:00 p.m. to 10:00 p.m. with two 15-minute breaks. Band will play music from the play list attached as Exhibit A to this Agreement. Band will not deviate from this play list. Band will remove its equipment from the Civic Center by 11:00 p.m.
 2. PTA will pay band \$300 in consideration for its performance. PTA will pay ½ this amount when Band arrives at the Civic Center and will pay the remaining ½ when the Band has removed all its equipment from the Civic Center. Payment will be made by checks payable to the leader of Band, Joe West.
- Conditions. Sometimes, performance under a contract is conditioned on something else happening first. For example, if the PTA is holding an outdoor event, performance may be conditioned on the weather. Or, if the PTA is holding a dinner/auction, the number of catered dinners may be conditioned on how many people RSVP by a date certain. If performance of either party is subject to a condition, your contract should identify the condition and the circumstances under which performance will or will not take place. For example:

“Band understands that PTA will hold the dinner and auction only if it receives RSVPs from at least 100 people who have been invited to the event. Therefore, and notwithstanding anything to the contrary in the foregoing, Band's services will not be required unless PTA advises Band in writing, on or before December 1, 2008, that the dinner and auction will take place. If PTA provides written confirmation of the event on or before this date, Band will be obligated to play at the event and PTA will be obligated to pay for Band's services. If PTA does not provide such written confirmation, Band will not be obligated to perform and PTA will pay Band a cancellation fee of \$50.”
- Contract Term. Sometimes, a contract is not for a one-time event but covers a longer

period of time. For example, your PTA may contract with a professional fundraiser to undertake a telephone solicitation. Or, you may contract with a desktop publisher to publish a periodic newsletter. In such cases, your contract should be for a stated term, whether that is a month or a year. The term should be long enough for both sides to perform and should allow you to realize the benefit of a good deal but it should not be so long as to tie the parties to a relationship that may turn out to be less than ideal. If, for example, you are hiring a desktop publishing firm and it has quoted you a very attractive price, you may be tempted to enter into a long-term contract in order to take advantage of that price for a long time. However, you need to balance that desire against the ability to hire a replacement firm in the event you turn out to be dissatisfied with the service provided by the first firm.

- Standards of Performance. Your contract should specify the quality and quantity of goods or services that you expect to receive. If, for example, you expect to receive magazine quality newsletters from a publishing firm, you need to specify that in your contract. Do not leave these matters to chance. You will inevitably be disappointed.
- Default and Remedies. Your contract should describe what happens in the event one of the parties fails to perform. If, for example, you hire a band to perform at an event and the band fails to show up, will you be entitled to recover any damages from the band? Or if you contract with a publishing firm to publish 100 newsletters every month and you receive only 75, or you receive 100 newsletters filled with grammatical and typographical errors, what are your remedies? At the very least, your contract should state that you do not have to pay for services or products that you do not receive or that are defective. You may also be able to negotiate a remedy that requires the other party to pay you for any losses you suffer because of that party's failure to properly perform.
- Warranties and Representations. In some contracts, it may be desirable or necessary for one or both parties to make warranties or representations. In a publishing contract, for example, the publishing firm may want you to warrant that you own the copyright to any articles that are published. Generally speaking, representations and warranties constitute assurances that a party has complied with laws related to its performance under the contract.
- Indemnification Provisions. It may also be advisable to include in your contract a provision that requires one party to indemnify the other for any losses that occur as a result of the other party's negligence or breach. If, for example, an auctioneer fails to show up for a fundraising dinner and you are unable to conduct the auction in his or her absence, you might want the auctioneer to pay whatever you would have otherwise earned on the auction. Or, if someone gets injured when a rented chair collapses and that person makes a claim against your PTA for damages, you might want the equipment rental company to reimburse you for any liability you incur.
- "Boilerplate" Provisions. Every contract usually has what are called "boilerplate" provisions and include the following: whether the contract may be assigned by either party; whether there are any other documents that are incorporated into the contract or whether the contract is instead an "integrated" document; addresses where notices can be delivered; how the parties can modify the contract (in writing only); a contact person for each

contracting party; a statement that in the event of a dispute, the prevailing party is entitled to recover its costs and reasonable attorney fees from the other party; any alternative dispute resolution provisions, such as mediation or arbitration.

- How to Execute a Contract. In order to avoid personal liability under a contract, the individual who signs the contract must sign on behalf of the PTA rather than in his or her individual capacity. The individual does this by adhering to the following signature convention. Remember, all PTA contracts require the signatures of two elected officers.

Sugarwood Parent Teacher Association,
A Montana nonprofit corporation

By:

Printed Name:

Title:

By:

Printed Name:

Title:

This signature convention protects the individual signers from personal liability only if your PTA is incorporated. If your PTA is unincorporated, then the individual signers will be liable if the PTA does not perform under the contract.

PRIVACY RIGHTS

Generally

As information continues to be a commodity and becomes easier to share, you must be careful regarding privacy rights, both personal and commercial, including protecting your PTA's private information against misuse. Common sense protective measures might be the best solution for protecting against most types of privacy violations.

Privacy Rights

Montana's Constitution protects individual's right to privacy. Therefore, you should refrain from publishing the name or picture of any individual in a way that is discrediting or embarrassing. You also must obtain permission from the parents of minors whose names or pictures you use. You do not need permission if a name or likeness is used in news reporting or where an individual is not recognizable.

Personality Rights

An individual also has the right to control the commercial exploitation of his or her name, voice, signature, photograph, or likeness. Any person who uses or authorizes the use of a person's name, voice, signature, photograph, or likeness on goods or in commerce in Montana for a commercial purpose and without consent of the owner has infringed the owner's personality right. Because of Montana's protection for personality rights, you should obtain permission from all persons whose name, voice, signature, photograph, or likeness you desire to publish, broadcast, or otherwise publicly use.

Libel and Slander

To avoid claims of libel or slander, you should avoid making statements in publications that suggest a person is dishonest, fraudulent, or immoral. Although truth is a defense to any libel or slander claim, you do not want to be in a position of having to defend such statements. They are often better left unsaid, even if you believe them to be true. Where you find it necessary to make truthful statements that may offend or disparage a person or organization, you should retain any evidence you have that those statements are true.

School Records

Although PTAs generally do not have access to education records, your PTA should be aware of the type of information that schools may and may not disclose. Generally, schools must have permission before releasing any personal information from a student's record. However, schools can release personal information without parental permission in the following cases:

- School employees with a need to know
- Another school where a student is transferring
- Government officials
- Appropriate parties in connection with financial aid to the student
- Organizations conducting certain studies for the school
- Accrediting organizations
- An individual with a subpoena or other power granted by court order; or
- In connection with a health or safety emergency.

Schools may also release "directory information" when parents do not object to such releases, provided the school gives parents an annual opportunity to object to disclosures before they occur. Directory information includes a student's name, address, telephone listing, date and place of birth, field of study, participation in official activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent school attended, and other information that would not be deemed an invasion of student's privacy.

Use of Mailing Lists

Your PTA is prohibited from sharing its mailing lists with anyone who is not a member. Even a member may not use the lists for any commercial or political purpose. If you use another organization's mailing list, you should obtain written permission in advance from the owner of the list to avoid any future claim of unauthorized use. The written permission should also contain a representation that the members have agreed that their names may be distributed to others and an indemnification clause under which the list owner will reimburse you for any damages you incur if a list member claims that the use of his or name was not authorized.

DISTRIBUTION OF PTA PUBLICATIONS

Options for Distribution of Publications

Your PTA may send publications home with children. This method of distribution is inexpensive

and easy. However, it can invade educational time and lacks reliability. Alternatively, your PTA may distribute materials through first class mail. Although this may be a more reliable method of distribution, it can also be expensive. Another option, just as reliable as first class mail and less expensive, is to distribute materials through bulk mail. However, bulk mail does have its drawbacks. It is slower than first class mail, there are certain restrictions on what can be mailed, and it requires a special permit that must be renewed annually. The following section outlines the requirements for distributing materials by nonprofit standard mail (which used to be called bulk mail).

Obtaining a Nonprofit Standard Mail Permit

Your PTA can obtain a nonprofit standard bulk mail permit by completing U.S. Postal Service Form 3624, Application to Mail at Special Bulk Third-Class Rates, at the post office where the mailings will be made. You may obtain Publication 417 from the Post Office for detailed instructions on how to complete the form. Generally, your PTA will have to prove that it is a nonprofit and that it is organized and operated for a charitable (educational or philanthropic) purpose. This proof may be made by providing the Post Office with a copy of one or more of the following: your Articles of Incorporation and Bylaws, a copy of the Montana PTA non-profit determination letter from the IRS, a list of your activities for the prior 12 months, an annual budget along with a statement detailing actual receipts and expenditures for the past fiscal year, or bulletins, minutes of meetings, brochures, and similar documentation that show how the organization operates.

Nonprofit Postage Rates

A fee must be paid for nonprofit standard bulk mailings. You may purchase special stamps or use postal metering or a deposit account with the Post Office from which charges will be deducted for each mailing. The postage rate for a particular mailing will depend on the kind of sorting you do. Lower rates are available for mailings imprinted with postal bar codes. Current rates for different types of mailings are set forth in Postal Service Form 3602-N for occasional mailings and Form 3541-N for periodicals. When your mail is presented for mailing at the bulk rate facility, a postal service employee will determine whether the postage charge is proper.

Identification as Nonprofit Standard Mail

All material mailed under a nonprofit standard bulk mail rate permit must be identified with the legal name of the organization as shown on its permit application. The required identification may be shown in the return address of the mail piece, or in a prominent location on the material being mailed if a return address is not shown. If the mail piece bears any name and return address, it must be that of the authorized nonprofit organization. In order to meet bulk mail rules, a PTA newsletter must also:

- Have a Title. The title must be printed on the front cover page in a style and size of type that clearly distinguishes the title from other information on the front cover.
- Be Formed of Printed Pages. The publication may not be reproduced by stencil, mimeograph, or hectograph process. Reproduction by any other process is permitted.
- Contain an Identification Statement. An identification statement must appear on one of the first five pages of the publication and must include the following information: title; issue

date (unless date appears on the front cover or cover page); issue number (unless it appears on the front cover or cover page; issues must be numbered consecutively in an unbroken series); frequency of publication (daily, weekly, monthly, etc.); subscription price (if any); name and address of authorized organization (including street number, street name, city, state and zip code).

- Consist of at Least 25% Non-advertising Material.

Where to Mail Materials. Nonprofit standard mailings must be delivered to a bulk mail acceptance facility.

INSURANCE MATTERS

Generally

Your PTA is responsible for its actions. When an accident occurs, there is a risk that your PTA (and possibly its directors and officers) will be named in a lawsuit. By obtaining insurance, your PTA can protect its assets from the costs of defending against a lawsuit or having to pay an adverse judgment.

Montana Insurance Program

The Montana PTA requires each PTA unit and council to obtain general liability insurance through the statewide insurance coverage plan coordinated by the Montana PTA office. The yearly premium is due each November 1 for the following school year. An Insurance Information is provided to each unit and council on the *Montana PTA website* including a Risk Management Guide to govern the types of activities your PTA sponsors. The current coverage is provided by AIM Association Insurance Management. Questions on the policy or reports of claims should be made directly to the carrier at 1-800-876-4044, PO Box 674051, Dallas, TX 75267-4051.

Fidelity Bond

A fidelity bond protects the PTA from dishonest acts by PTA officers or members who handle PTA funds. Your PTA may obtain fidelity bond insurance directly from AIM Association Insurance Management. If an officer or members steals PTA funds, the fidelity bond may be used to repay those funds (less the deductible). In order to meet the standards for obtaining a fidelity bond, your PTA's financial record keeping must conform to the requirements of the bonding company. Robbery or theft by persons other than officers or members is usually not covered.

Directors and Officers Insurance

Directors and officers insurance (sometimes called errors and omissions insurance) can protect the personal assets of its directors and officers as well as the assets of the PTA in the event a member or nonmember files a lawsuit claiming that an officer or director was negligent in the management or operation of the PTA. Coverage extends to wrongful acts by officers and directors while acting within the scope of their official duties, including mismanagement or the dissemination of false information. Your PTA may obtain directors and officers insurance directly from AIM Association

Insurance Management.

Property Insurance

Property insurance protects any personal property owned or under the care, custody or control of the PTA against damage or loss. The insurance covers the cost of replacing the damaged item. Again this coverage can be obtained directly from AIM Association Insurance Management.

DUTIES OF BOARD MEMBERS

Laws Governing Directors and Officers

Besides the prohibitions against private benefit and private inurement, discussed above, there are no federal laws governing the duties of nonprofit directors and officers. Rather, the conduct of officers and directors is, for the most part, governed by state law. There are very few court decisions on the liability of directors of nonprofit organizations. Most of the guidance in this area comes from decisions that deal with directors of for-profit corporations. However, Montana's nonprofit corporations act has a specific provision that covers the duties of directors and officers. Nonprofit directors and officers are also subject to an array of federal and state laws governing liability in a number of discrete areas, such as payment of taxes, reporting requirements, environmental hazards, employment-related disputes, and anti-trust.

Duty to Manage the Organization

- Generally. As mandated by state statute, the affairs of a nonprofit corporation must be managed by its board of directors. This means that the board is the decision-making body of the organization. As discussed below, your board may, and in some cases must, delegate certain responsibilities and tasks to employees and other agents of your PTA. However, the directors are, by statute, ultimately responsible for the affairs of the PTA. Although the statutory mandate does not describe exactly what it is that nonprofit boards are supposed to do, such principles can be gleaned from cases from other jurisdictions and from commentators in the nonprofit field.
- Obedience to Mission. It is generally recognized that the duty to manage the affairs of a nonprofit organization carries with it a duty to carry out the purposes of the organization and manage the organization according to the best interests of its constituents. This duty is sometimes called the duty of obedience. A principal rationale for imposing this duty is the reliance of donors on an organization's faithfulness to its mission.
- Other Responsibilities. In addition to adhering to the mission of the organization, the duty to manage its affairs imposes upon the board responsibility for:
 1. Selecting, supervising and, where appropriate, replacing the key staff person and fixing his or her salary;
 2. Overseeing the conduct of the organization's activities to evaluate whether those activities are being properly managed;
 3. Reviewing and, where appropriate, approving the organization's financial and programmatic objectives and actions;

4. Approving auditing and accounting principles and practices to be used in the preparation of the organization's financial statements;
5. Performing such other functions as are prescribed by law, or assigned to the board under a standard of the corporation.

Complying with these standards encourages accountability, oversight, and active participation in decision-making, all of which not only furthers the organization's good work in more effective ways but which, as discussed further below, may also provide insurance against liability.

- Independent Action Not Permitted. In exercising their general duty to manage the organization, the board must act as a body. No individual director, acting alone, has the power to make decisions on behalf of the organization. Each director nevertheless has independent legal duties to the organization and, in some cases, to third parties, the breach of which may subject the director to liability. These are discussed below.

Duty of Loyalty

As provided in Montana statute, a director must always act in the best interests of the corporation. Beyond this general statement of responsibility, there is nothing in the act or in any court decision that describes the nonprofit director's duty of loyalty. There is, however, case law that prohibits for-profit corporate directors from engaging in any act by, from, or through which they will personally gain at the expense of the corporation. Borrowing from the for-profit world, most commentators describe the duty of loyalty of nonprofit directors as having three separate components: (1) the duty to avoid conflicts of interest, (2) the duty to not usurp corporate opportunities, and (3) the duty to maintain the confidentiality of private corporate affairs.

- Conflicts of Interest
 - *What constitutes a Conflict?* A conflict of interest exists whenever it is possible for a director to derive a benefit, either direct or indirect, because of his or her position on the board. The conflict may arise from a personal, professional or family interest. For example, a director who runs a catering business may benefit professionally if the PTA contracts with the director's catering firm. Or, the director may be married to someone who works at a copy center that provides services to the organization.
 - Conflicts of Interest are not prohibited. The mere existence of a conflict of interest does not require the board to forego an opportunity that is otherwise advantageous to the PTA. It only requires that the disinterested directors make an informed decision whether the organization should proceed notwithstanding the potential benefit to be derived by an individual director, if it is otherwise in the best interests of the organization to do so. For example, the catering firm owned by a director may provide the best food at the best prices. By engaging this firm, your PTA gets a good bargain even though an indirect consequence of this action is to benefit an individual director. Similarly, your PTA may be best served by using the services of a particular copy center notwithstanding that a relative of a director works there.
 - What do you do if a Conflict exists? The general rule is that a director may not vote

on a matter before the board in which the director has a personal interest. In fact, there is no legal quorum of directors where one of the directors necessary for the quorum has a personal interest in the matter in question. However, the personal interest of a director does not prevent the board from voting in favor of a proposal if there is full disclosure of that interest and the affected director refrains from voting. Thus, in any situation where the potential for a conflict arises, the affected director should fully disclose his or her interest before the board engages in a discussion of the issue or takes action on the matter. Any disclosures should also be reflected in a written statement by the director and/or the minutes of the board meeting at which the disclosure was made. The director should then remove him or herself from further deliberations regarding the matter. And, the director should make sure his or her abstention is recorded in the minutes of the meeting at which the vote was taken. These precautions can protect a director from a charge that he or she acted out of self-interest. They can also protect the organization itself from unfavorable public scrutiny.

- Corporate Opportunity. A second component of the duty of loyalty prohibits directors from taking advantage of corporate opportunities. In other words, a director may not fail to disclose a corporate opportunity in order to take advantage of the opportunity him or herself. If, for example, a director learns, through his or her service on the board, that a certain person is willing to conduct auctions for free for a limited number of nonprofit organizations, the director cannot contact the auctioneer and request that its services be provided to another organization without first determining that the PTA is not interested in pursuing that opportunity.
- Confidentiality. Directors of nonprofit organizations, like their for-profit counterparts, also have a duty not to disclose confidential information, such as personnel and budget matters, to outsiders. A nonprofit organization can also have trade secrets or be involved in delicate contract negotiations or fund raising efforts that would be adversely affected by public exposure. Keeping such matters confidential improves the organization's ability to manage its affairs in a thoughtful and deliberate manner and shields the organization from unwarranted interference by outsiders.
- Penalties. In the for-profit world, any personal profit or advantage gained through a violation of the duty of loyalty must be returned to the organization. It is likely a court would impose similar penalties on nonprofit directors. Nonprofit organizations can also levy their own penalties against directors who violate the duty of loyalty. They may, for example, remove a director from office or even impose a fine. As discussed above, a director's receipt of private benefits can also gravely harm the organization itself as this can be grounds for the organization losing its federal tax-exempt status.

Duty of Care

A director must act "with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." This requirement is called the duty of care.

- The Business Judgment Rule. The duty of care of nonprofit directors has sometimes been

likened to the "business judgment rule," which immunizes management from liability in a corporate transaction where a reasonable basis exists to indicate that the transaction was made in good faith. This rule protects corporate directors and officers from liability for "honest mistakes." In other words, absent a showing of fraud, dishonesty, or incompetence, it is not the court's job to second-guess the actions of directors.

- The Prudent Person Standard. However, proof of good faith alone may not be sufficient to satisfy a director's obligations to the corporation. Directors have an obligation to act in good faith and satisfy the "prudent person" rule. This language, as it implies, refers to what an ordinary person, without any particular skills or expertise, would do in a particular circumstance. There are instances, however, when special expertise is required in order for the board to make decisions. In such cases (for example, if the board is evaluating its liability with respect to a threatened lawsuit), it would be imprudent to fail to recognize the need for such expertise and not employ it. The terms "similar circumstances" and "like position" used in state statute provide for flexibility in judging the conduct of a director or officer. These terms recognize that there are any number of circumstances under which particular decisions can be made. For example, the nature of the nonprofit, its size and complexity, the magnitude of any problems, and the individual role of the director or officer may all have bearing on whether a director or officer acted with the requisite degree of prudence.
- Staying Informed and Active. At a minimum, prudence requires that directors take steps to become informed before making decisions. Directors should always collect and review pertinent information and make inquiry where appropriate. Directors should also attend board meetings. A director cannot properly discharge his or her duty of care without personally participating in board deliberations. Nor can a nonprofit director vote by proxy. Unless the director is present during board deliberations, he or she cannot influence the course of those deliberations.
- Ability to Rely on Others. Directors may rely on information provided to them by employees of the corporation, professionals engaged by the corporation, or committees of the corporation, so long as there is no reason to doubt the accuracy and completeness of that information. In other words, reliance on information provided by another must also be based on reasonable inquiry and conform to the prudent person standard.
- Ability to Delegate to Others. Although committees may be vested generally with corporate powers, there are certain actions that committees are prohibited from taking, such as altering or repealing the Articles of Incorporation or Bylaws, electing or removing committee members, officers or directors; adopting a plan to merge with another organization; or authorizing the dissolution of the PTA. The board may, of course, further limit the powers of the committee by resolution. However, the designation and appointment of the committee and the delegation of authority to a committee does not relieve the board of directors, or anyone of them, of any responsibility to the organization.
- What to do when you disagree. If a director does not think an action is prudent, he or she must put an objection into the record. This can be done by casting a dissenting vote, which should be recorded in the minutes of the meeting, or by filing a written dissent to such action with the secretary of the corporation before the adjournment of the meeting or by

registered mail immediately after adjournment of the meeting. The right to dissent cannot be exercised by any director who voted in favor of an action. The mere casting of a dissenting vote may not absolve a director from liability if, for example, the director has breached some other duty in connection with the matter at issue. However, it can lend strength to an argument that the dissenting director is not liable for an imprudent action by the remaining board.

Potential Bases of Liability

In addition to liabilities arising from breach of the duties discussed above (duty of obedience, duty of loyalty and duty of care) directors and officers may also incur other types of liabilities:

- Loans to Directors. A nonprofit corporation cannot loan money or credit to its officers or directors. Any directors who vote for, assent to, or otherwise participate in the making of a loan in violation of this restriction are jointly and severally liable to the corporation for the amount of the loan until repaid.
- Personal Contracts. Officers and directors can be liable for performance or nonperformance of corporate contracts and corporate debts or other obligations if they have acted in a way to assume such liability, for example by guaranteeing an obligation or inducing reliance through misrepresentations. Failure to adhere to sign contracts in the name of the PTA (rather than the name of the individual) can also expose an individual to personal liability.
- Personal Misconduct. Directors and officers of nonprofit corporations, just like directors and officers of for-profits, may be liable to third parties for their own personal misconduct. If, for example, a director gets into a fight with a parent, the director will be personally liable for any damages suffered by the parent.
- Tax Delinquencies. Directors may be held personally liable if the organization fails to remit state or federal taxes.
- Criminal Activities. Participation in criminal activities or otherwise unlawful acts, even when acting in a corporate capacity, may lead to personal liability.

Co-officers

Robert's Rules of Order, Newly Revised, one source of guidance to PTA organization management, *doesn't* recognize co-officers. Co-officers implies two people of equal rank sharing one position. In PTA, only one name may be listed for each office in the National PTA records. The *Montana PTA Uniform Bylaws for Local Units and Councils* doesn't recognize co-officers. Without specifically allowing this situation, the bylaws are interpreted to allow one vote for each officer. Therefore, the second person in a shared office does not have the right to vote as a holder of the shared office. The Montana PTA does have the authority to grant exceptions when circumstances require it, however, if an exception is requested and granted, only one person shall be designated as the official contact person with the Montana PTA and the National PTA. All co-officers must be elected/appointed to the shared office in the manner specified in the bylaws and standing rules.

PROTECTION FROM LIABILITY

The best way to protect yourself from personal liability is to comply with your duties. A checklist of ways to minimize risk is provided at the end of this section. However, we live in a litigious society and even the most diligent board member can be sued. State and federal law provide certain protections that can limit the liability of directors and officers and/or cover the costs of defending lawsuits.

Immunity from Liability to Third Persons

- Immunity Under State Law. Montana state law immunizes volunteers, directors, and officers of nonprofit corporations from liability for discretionary acts or failures to act except in the case of gross negligence. This immunity applies only to suits brought by third parties. It does not limit or modify in any way the duties or liabilities of a director or officer to the corporation itself or to the corporation's members.
- Immunity Under Federal Law. In 1997, Congress enacted the Volunteer Protection Act, which limits the potential tort liability of volunteers of nonprofit organizations to third parties. Under the Act, a volunteer is defined as an individual performing services for a nonprofit (or governmental entity) who does not receive compensation, or any other thing of value in lieu of compensation, in excess of \$500 per year. Thus, to the extent nonprofit directors and officers do not receive compensation for their work, they are covered by the Act. A nonprofit corporation is defined as any tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code or any other bona fide philanthropic or civic nonprofit organization. The Act provides, with certain exceptions, that "no volunteer of a nonprofit organization. . . shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization if the prescribed conditions are met: (1) the volunteer must have been working within the scope of his or her responsibilities to the nonprofit organization at the time of the act or omission; (2) if appropriate or required, the volunteer was properly licensed, certified or authorized by appropriate authorities; (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the person harmed by the volunteer; and; (4) the harm was not caused by the volunteer's operation of a motor vehicle, vessel or aircraft." Immunity under the Act also expressly does not apply to any misconduct that constitutes a crime of violence, a hate crime, a sexual offense, a violation of a state or federal civil rights law, or where the volunteer was under the influence of alcohol or drugs.

Limiting Liability To Corporation Or Members

In addition to the circumstances, noted above, where a director or officer may be immune from liability to a third party, a nonprofit corporation may limit the personal liability of its directors to the corporation or its members (but not to third parties) by including an appropriate provision in its Articles of Incorporation. There are, however, restrictions on such limits. The corporation can limit director liability only for monetary damages. The corporation cannot limit liability for acts

involving intentional misconduct or knowing violations of the law or with respect to any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not entitled. The corporation cannot limit the liability of officers who are not directors. And, any limits on director liability cannot apply retroactively.

Indemnification

In addition to the statutory immunity for claims by third parties (except in the case of gross negligence) and the corporation's ability to limit the liability of directors either to the corporation itself or to its members (except for the restrictions noted above), a corporation may also "indemnify" its directors and officers. This means that the corporation can pay the expenses of any lawsuit in which a director or officer gets involved as a result of his or her service on the board. However, a director or officer may be indemnified by the organization only if he or she acted in good faith and in the best interests of the corporation. Also, the corporation cannot indemnify a director if he or she was determined by a court to be liable to the corporation. Conversely, unless specifically precluded by its Articles of Incorporation, the corporation must indemnify a director who successfully defends an action.

HOW TO MINIMIZE THE RISK OF BEING SUED

Under the Montana PTA Uniform Bylaws for Units or Councils, the board of directors of each PTA consists of the executive committee (the officers) and other persons appointed by the executive committee. These directors can minimize their risk to third parties and to the corporation itself by taking reasonable measures. At a minimum, organizations and board members should do the following:

Select Competent Board Members

The board should express the qualifications of directors. Such qualifications should include:

- Experience in the business of organization
- Skills/experience in corporate transactions
- Prior board experience
- Particular skills required by organization

Provide Board Orientation/Training

It is essential that new board members go through an orientation to provide them with information about the organization and about the expectations the organization has regarding their participation and level of commitment. Ideally, these conversations occur during the process of Board recruitment so that Board candidates are well informed before they make a commitment to the organization. Even if such information is shared in the recruitment process, the organization should take the time to review the information once the new director comes on board. Preferably, this information will be conveyed in written and oral form. Areas to cover include:

- Business of corporation

- Employee roles, functions
- Organizational structure
- Articles, Bylaws, 501(c)(3)
- Strategic plans
- Financial status
- Responsibilities of Directors
- "Job Descriptions"

Conduct Regular Meetings

The most effective way of imparting information to directors is by holding regular meetings of the board. Although the organization should not forego collegiality for the sake of formality, it is important that directors take seriously the business of the organization. Ways to encourage this attitude include the following:

- Provide information in advance of meetings
- Adopt rules of procedure
- Follow agenda

Require Attendance at Meetings

It is not enough simply to schedule regular meetings. Directors and staff need to attend those meetings in order for the business of the organization to be conducted in an effective way. The corporation can require attendance of its directors as a condition of their involvement on the board. Such requirements can be stated in the bylaws or by board resolution. Some organizations require their directors to sign a "contract" acknowledging this responsibility and agreeing to abide by it.

Be Informed

Perhaps the single most important step that individual directors may take to minimize the risk of liability, in addition to regular attendance at board meetings, is to take steps to stay informed of the organization's activities. In fulfilling this responsibility, directors should:

- Demand information in advance of meetings
- Request additional information if necessary to make decisions
- Read all information provided

Be Prudent

Once a director receives information, he or she needs to determine what to do with it. This is where prudence is called for. Before making decisions, directors should:

- Determine if reliance on third parties is reasonable
- Be cognizant of the source of information

Directors should also engage in deliberations with other board members regarding the matters at issue to ensure that they fully understand all sides to an issue and have a reasonable basis for reaching a conclusion.

Exercise Independent Judgment

Although directors benefit from discussing matters with other directors on the board, in making any decision, directors need to act independently. A director cannot avoid liability by failing to participate in decisions. Nor can a director avoid liability by simply going along with the decisions made by others. Rather, the director has a duty to think for him or herself in all matters brought before him or her.

This includes, specifically:

- Critically examining information
- Acting on behalf of the PTA, not any particular individual

Avoid Conflicts of Interest

Both the organization and its directors can take steps to avoid conflicts of interest from adversely affecting the work of the organization or subjecting the directors to unwanted liability. On the corporate side, such steps include:

- Establishing a conflicts policy and following it
- Administering annual conflicts questionnaires to the directors

Individual directors should also:

- Be conscious of potential conflicts
- Make full disclosure to organization prior to discussion or action
- Not participate in decision-making on matters where conflict exists
- Make adequate record of disclosure/recusal/abstentions
- Not usurp corporate opportunity
- Keep corporate matters confidential

Hire Competent Staff

Although directors are not generally liable for the actions of corporate employees, like their for-profit counterparts, they may be liable for the negligent hiring or retention of employees. Therefore, directors should take steps to:

- Prudently select employees
- Avoid joint staff/board positions
- Develop clear job descriptions

Seek Outside Advice

Whenever there is a question about the liability of the board, the board should not hesitate to seek outside advice. The board should realize however, and each director should be advised, that the interests of the organization and its directors may sometimes diverge, as may the interests of individual directors one to the other. Thus, it may not be possible for legal counsel to represent the interests of both simultaneously. In that event, each director may need to hire independent legal counsel to represent his or her interests.

Obtain Insurance

Finally, nonprofit corporations should seriously consider obtaining directors and officers errors and omissions policies. The right of indemnification is no more than an empty promise if the

organization does not have the financial means to pay expenses incurred by its directors in defending actions they take on behalf of the organization.

CONDUCTING MEETINGS

Presence at Meetings

Your PTA is not a public entity. It is a private organization. Therefore, you have the right to determine who attends meetings of your organization. Some PTAs allow only members of a particular committee, board, or general membership to attend meetings of those groups. Other PTAs are more inclusive, for example by permitting members to attend board meetings or members of the public to attend general membership meetings.

Quorum

A quorum represents the minimum number of persons who must be present at a meeting in order for business to be legally transacted. In the absence of a quorum, the group does not have authority to make motions or pass resolutions. The quorum requirements must be stated in the unit/council Standing Rules.

Voting

Motions are passed by the affirmative vote of a majority of persons present as long as a quorum is present. Members may vote by proxy. Directors may not. The chair or presiding officer has the same voting rights as any other director or member. However, the chair may wish to establish impartiality by exercising its voting right only when its vote would affect the outcome of an issue, for example in the case of a tie. When there is a written ballot, the chair can always vote, at the same time other members are voting.

Minutes

Minutes should be taken of board, committee and general membership meetings. Minutes should include the exact wording of every motion, and the actions taken on the motion. Minutes may include a general description of topics of discussion. Under state law, a nonprofit organization is required to maintain minutes of all board, committee and membership meetings. These records are open to inspection by any member of the association.

ASSOCIATION WITH OTHER GROUPS

Site Based Management.

- Generally. Site based management is a way of organizing school leadership and management so that those at the school site are given more responsibility and authority. It shifts decision-making from the central authority of the district superintendent or school board to the local school's educational staff, parents, and interested citizens. Site based management is called many things: site councils, shared decision-making, learning improvement teams. Whatever its name, the purpose of this shared decision-making concept is to improve student learning. Because site councils are created through policies

adopted by districts' school boards, they are part of the school system. As such, they are responsible for governing, managing and administering individual school sites in accordance with rules and laws, which govern the public school system. Site councils do not have any authority over a private organization such as your PTA.

- Site Council vs. PTA. The most successful site councils will exist where there are strong PTAs. PTA has the capacity to use its communication network to get information to and from parents. Also, PTA has the right and the responsibility, as an independent child advocacy organization, to examine the work of a site council and to comment on it on behalf of its membership. This dialogue is essential to improved student learning.
- Site Council Membership. A characteristic of the most successful site councils is equal representation from all stakeholders - both consumers and providers. As the parent association in the public education system, PTA is the most logical place to find parent members of the council. However, another characteristic of the most successful councils is that parents define their own involvement in the council. Councils need to select parents who can commit to be involved on the council.
- Fund Raising. Because site councils are part of the public education system, funds to support and operate the councils are public funds and must be administered by the school district - they are not the responsibility of the PTA.

Coalitions.

The reputation and credibility of your PTA is determined, in great part, by the groups and organizations with which it works. Also keep in mind that your PTA's continuing status, as a 501(c)(3) organization, requires that it not be involved to a substantial degree in any activities that do not further its charitable purpose. Therefore, your PTA must always exercise due diligence in selecting groups to support, endorse or work with. Due diligence means determining that the group's purposes, goals and specific objectives are consistent with the policies, principles and ethics of your PTA. Some questions that your PTA should ask about another organization as part of its due diligence are:

- Does the group further the interests of children in a nondiscriminatory way?
- What other organizations support this group?
- How does this group develop its policies and positions? What criteria are used? Who makes the decisions?
- From what source(s) does this group receive financial support?
- Has the group provided the PTA with any background information on itself?
- What is the background of the group's organizers? How are members selected?
- Why does this group want PTA's involvement? What specific action is sought from PTA?
- Is the group willing to provide answers to these questions (and others) in writing?
- Does the group have its own liability insurance?