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Chris Reykdal
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Dear Superintendent Reykdal:

Thank you for your recent letter asking for a memo from my Office about a legal issue affecting school districts related to the COVID-19 pandemic. You asked whether it would be an unconstitutional gift of public funds for school districts to place employees on administrative leave with pay if they “are quarantined or isolated by health authorities or their doctor, or if their health is otherwise deemed at risk by a medical professional due to the virus.”¹

As your letter acknowledges, the urgent timeline of this request renders it impossible for us to follow our normal, painstaking process for issuing a formal Attorney General Opinion. Thus, the guidance provided in this letter is not a formal opinion, and should be understood as applying only in the context of the immediate crisis our State is now facing. This letter also does not attempt to address other legal questions school districts may face related to extended closures. With those caveats, we have great confidence in the answer provided below to your question.

We think it is extremely unlikely that a court would conclude that providing paid administrative leave in the circumstances described above is an unconstitutional gift of public funds.

Article VIII, sections 5 and 7 of the Washington Constitution each restrict government from giving or loaning public funds to private individuals, companies, or associations. The purpose of the provisions is to prevent public funds from being used to benefit private interests where the public interest is not primarily served. *CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996). Washington courts “use a two-pronged analysis to determine whether a gift of public funds has occurred.” *In re Recall of Burnham*, 194 Wn.2d 68, 77, 448 P.3d 747 (2019); *Brower v. State*, 137 Wn.2d 44, 62, 969 P.2d 42 (1998). “First, courts must ask whether the funds were expended to carry out a fundamental purpose of the government.” *Burnham*, 194 Wn.2d at 77. If they were used to carry out a fundamental public purpose, the analysis ends, and there is no gift

¹ While different school districts may define “administrative leave” in different ways, for purposes of this letter we use “administrative leave with pay” and “paid administrative leave” interchangeably to mean that employees are not working but are receiving their regular pay and their accrued leave banks are not impacted.

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of public funds. *Id.*; *Brower*, 137 Wn.2d at 62. If they were not used to carry out a fundamental public purpose, then the court asks whether the funds were given with donative intent, and what the public received in exchange. *CLEAN*, 130 Wn.2d at 797-98.

In the COVID-19 pandemic, many school district employees may be quarantined or asked not to work to prevent the spread of this deadly illness. Protecting public health is without question a fundamental purpose of government. *See, e.g., Hudson v. City of Wenatchee*, 94 Wn. App. 990, 995, 974 P.2d 342 (1999) (describing “the preservation of the public health” and “promotion of the public welfare” as fundamental purposes of government). Given public health officials’ advice relating to the current circumstances, there is a strong basis for school districts to conclude that compensating employees for leave furthers a public health purpose by encouraging employees to follow medical advice and not place themselves and others at risk. It is thus clear that placing employees on paid administrative leave to protect the public health and welfare furthers a fundamental public purpose and would not amount to an unconstitutional gift of funds.

Even if a court somehow concluded that providing paid administrative leave in this context did not further a fundamental purpose of government, it is still unlikely that a court would find a gift of public funds under the second prong of the test. We are aware of no evidence that a school district would have “donative intent” by providing paid administrative leave in this emergency context. Moreover, in exchange for the paid administrative leave, the districts receive something in return: employees are required to follow medical advice and not attend work, thereby helping protect themselves, fellow employees, students, and the broader community from a dangerous disease. This is not the sort of “grossly inadequate” consideration required to show a gift of public funds. *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 705, 743 P.2d 793 (1987). This is especially clear because the payments being made are to public employees who remain subject to the school district’s policies. *See CLEAN*, 130 Wn.2d at 798-99 (distinguishing public funds used towards the construction of a baseball stadium owned and managed by a public entity from funds expended to a private fair association).

In short, it is exceedingly unlikely that a court would find that providing paid administrative leave to further the directives and advice of public health officials and medical professionals and to further public safety is an unconstitutional gift of public funds.

I hope this is useful to you.

Sincerely,



BOB FERGUSON
Attorney General

RWF/jlg