



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-104

January 7, 2026

The Honorable Stetson C. Painter
State Representative
Post Office Box 1198
Mountain Home, Arkansas 72654-1198

Dear Representative Painter:

I am writing in response to your request for an opinion regarding the broadcasting rights to high school sporting events, specifically regular-season high school football games. You provided documentation including news articles, emails, and text messages, concerning a dispute that arose when long-time announcers were unexpectedly replaced during the August 18, 2025 broadcast of a Mountain Home Public Schools football game. Following that incident, *The Baxter Bulletin* raised concerns about KTLO Radio and the Bomber Booster Club selling advertising using the school district's intellectual property.

Against this background, you ask the following questions:

1. Under A.C.A. § 6-21-816 (Sale or lease of public school facilities), should regular-season broadcast rights to high school football games, which are a public asset of intellectual property belonging to the school district, be treated like other valuable property, such as real property, of the district, and therefore subject to the cited code section since statutorily significant monetary value of said intellectual property has been established by an outside private party operating as an agent on the school's behalf in selling such property?

Brief response: No, A.C.A. § 6-21-816 applies only to the sale or lease of physical public school facilities or real property—not to intangible intellectual property like broadcasting rights. But article 14, section 2 of the Arkansas Constitution requires that school district property—including intellectual property—be used for the benefit of the school district.

2. May a school district allow an outside third-party entity (such as an advertising agency) to represent it in such financial matters without employing the bidding process to provide that service and selecting the appropriate bidder?

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Brief response: Yes, a school district may hire an advertising agency without soliciting competitive bids under A.C.A. § 6-21-304 if the cost is under \$20,000 or if the service qualifies as a personal or professional service, which is exempt from the bidding requirement.

3. May a school district allow some or all proceeds from the sale of its intellectual/real property (broadcasting rights) to go directly to an outside private third party (such as a booster club) with such funds not passing through, nor being accounted for, in district coffers?

Brief response: Yes, a school district may permit a third party, such as a booster club, to keep proceeds it raises from using district-owned intellectual property—like broadcasting rights—provided that the arrangement is authorized by the school district and provides a benefit to the school district.

DISCUSSION

Question 1: Under A.C.A. § 6-21-816 (Sale or lease of public school facilities), should regular season broadcast rights to high school football games, which are a public asset of intellectual property belonging to the school district, be treated like other valuable property, such as real property, of the district, and therefore subject to the cited code section since statutorily significant monetary value of said intellectual property has been established by an outside private party operating as an agent on the school’s behalf in selling such property?

No, A.C.A. § 6-21-816 does not govern how a public school district manages its intellectual property or broadcasting rights. But, as discussed below, other constitutional provisions limit how a district may use its intellectual property.

1. Why A.C.A. § 6-21-816 does not apply. Arkansas Code § 6-21-816 applies only to physical school facilities and real property, not to intangible assets like intellectual property or broadcasting rights. The statute provides:

Except as otherwise provided in this section, if a school district determines that any public school facility or other real property is no longer needed for school purposes or is unused or underutilized, the school district may sell or lease the public school facility in accordance with §§ 6-13-103 and 6-13-620 and this subchapter.¹

The statute defines “public school facility” in terms that clearly refer to tangible, physical structures.² While the statute does not define “real property,” A.C.A. § 26-1-101 (used in taxation

¹ A.C.A. § 6-21-816(a)(1).

² *Id.* § 6-21-803(13) (“‘Public school facility’ means any public school building or space, including related areas such as the physical plant and grounds, that is used for any purpose, including, without limitation: (A) An extracurricular

contexts) defines it as “not only the land itself, whether laid out in town lots or otherwise, with all things therein contained, but also all buildings, structures, improvements, and other fixtures of whatever kind thereon and all rights and privileges belonging or in anywise appertaining thereto.”³ That definition, which is consistent with how the term is generally used in Arkansas and federal law, refers to immovable, tangible property and associated legal interests—not to intellectual property or media rights, which are intangible.

Thus, broadcasting rights do not fall within the scope of A.C.A. § 6-21-816 and are not subject to its requirements regarding the sale or lease of public school facilities. But the Arkansas Constitution and other statutes place limits on how a school district may use its property, including intellectual property.

2. Constitutional requirements. Although the specific statute you cited does not apply, the Arkansas Constitution places limits on how a school district may use its property, including its intellectual property. Article 14, section 1 of the Arkansas Constitution requires the state to maintain a general, suitable, and efficient system of public education, which is carried out through local school districts and their boards. As the Arkansas Supreme Court has explained, a school board’s primary duty is to provide free education to the children within their districts according to state standards: “[t]he function and duty of the School Board is not to maintain property values but to provide educational facilities for the children within the area.”⁴

This principle aligns with the constraints imposed on school property by article 14, section 2 of the Arkansas Constitution, which provides: “[n]o money or property belonging to the public-school fund, or to this State, for the benefit of schools or universities, shall ever be used for any other purpose than for the respective purposes to which it belongs.”⁵

The Arkansas Supreme Court has interpreted this provision to require that school funds and property be used to benefit the school district.⁶ Determining what constitutes a “benefit” is largely within the discretion of the school board.⁷ Arkansas law—particularly A.C.A. § 6-13-120—grants school boards broad authority to manage district affairs, and courts will not interfere absent a clear

activity; (B) An organized physical activity course as defined in § 6-16-137; (C) Prekindergarten education; (D) District administration; or (E) Delivery of instruction to public school students that is an integral part of an adequate education as described in § 6-20-2302”).

³ A.C.A. § 26-1-101(9).

⁴ *Safferstone v. Tucker*, 235 Ark. 70, 75, 357 S.W.2d 3, 5 (1962).

⁵ Ark. Const. art. 14, § 2.

⁶ *Gray v. Mitchell*, 373 Ark. 560, 571, 285 S.W.3d 222, 232 (2008) (holding that a severance payment to a terminated superintendent did not confer a primarily private benefit but that it benefited the school district because it allowed the district to hire a preferable replacement).

⁷ *Id.* at 570, 285 S.W.3d at 231.

abuse of that discretion, which must be proven by clear and convincing evidence.⁸ In applying Article 14, section 2, the Arkansas Supreme Court has emphasized that its role is limited to ensuring that school property and funds are not diverted to purposes unrelated to the operation of schools.⁹ Thus, it is largely up to each school district to determine whether a particular arrangement regarding its property benefits the district.

Question 2: May a school district allow an outside private third-party entity (such as an advertising agency) to represent it in such financial matters without employing the bidding process to provide that service and selecting the appropriate bidder?

Yes, a school district may hire an advertising agency without soliciting competitive bids under A.C.A. § 6-21-304 if the cost is under \$20,000 or if the service qualifies as a personal or professional service, which is exempt from the bidding requirement.

Competitive bidding is required only when the estimated purchase price of a commodity equals or exceeds \$20,000.¹⁰ Even when bidding is required, the district may reject all bids and negotiate a contract instead, provided that all responsible bidders are notified and given a reasonable opportunity to negotiate.¹¹ A purchase official may not split or parcel commodity purchases to circumvent the \$20,000 threshold.¹²

The statute defines commodities as “all supplies, goods, material, equipment, machinery, facilities, personal property, and services, other than personal and professional services, purchased for or on behalf of the school district[.]”¹³ Hiring an advertising agency most naturally falls within the category of “services.” The state procurement statute defines “[t]echnical and general services” as:

(i) Work accomplished by skilled individuals involving time, labor, and a degree of expertise, in which performance is evaluated based upon the quality of the work and the results produced;

⁸ See A.C.A. § 6-13-620 (school districts are charged with entering “into contracts for goods and services necessary to operate the school district,” ensuring that “all properties belonging to the district are managed and maintained for the benefit of the school district,” and “doing all other things necessary and lawful for the conduct of efficient free public schools in the school district.”); see also *Safferstone*, 235 Ark. at 72–73, 357 S.W.2d at 4.

⁹ *Gray*, 373 Ark. at 569, 285 S.W.3d at 231.

¹⁰ *Id.* § 6-21-304(a)(1)(A)(i)(a); see also § 6-21-304(a)(1)(B)(i) (requiring the Commissioner of Elementary and Secondary Education to adjust purchase price amounts under subdivision (a)(1)(A) annually based on the Consumer Price Index).

¹¹ *Id.* § 6-21-304(a)(1)(A)(i)(b).

¹² *Id.* § 6-21-304(a)(1)(A)(iii).

¹³ *Id.* § 6-21-301(1).

(ii) Work performed to meet a demand, including without limitation work of a recurring nature that does not necessarily require special skills or extensive training; or

(iii) The furnishing of labor, time, or effort by a contractor or vendor not involving the delivery of any specific end product other than reports that are incidental to the required performance.¹⁴

The Code of Arkansas Rules further defines an “advertising agency” as “a business that provides comprehensive, professional advertising services including, but not limited to: (A) Artwork; (B) Concepting; (C) Designing; and (D) Any other creative services necessary to create, plan, and implement an advertising scheme.”¹⁵ Thus, an advertising agency generally falls under the category of “services,” making it subject to the bidding requirement unless the purchase is under \$20,000 or qualifies as a personal or professional service exempt from bidding.

Although the term “personal and professional services” is not defined in the statute, this office has consistently held that “personal services” are “those services that require special skill, experience, or business judgment.”¹⁶ Conversely, this office has understood “professional services” to refer to services by an individual who has received particular professional training to provide the service.¹⁷ For example, legal, architectural, engineering, and land surveying services are typically regarded as professional services.

Determining whether an advertising agency qualifies for the personal or professional services exemption under A.C.A. § 6-21-304 is a fact-specific inquiry. The professional services exemption is unlikely to apply because advertising work generally does not require professional licensure or formal certification, unlike legal, architectural, engineering, or land surveying services. However, advertising services may qualify as personal services, depending on the nature of the work performed.

For instance, if a school district engages an advertising agency to lead a comprehensive branding project—including tasks such as developing brand strategy, crafting key messaging, refining the mission and values, and designing logos or websites—such work would likely qualify as personal services. This is because it requires specialized skill, experience, and business judgment, typically provided by specific individuals or teams with creative and strategic expertise.

¹⁴ A.C.A. § 19-61-103(34)(A)(i)–(iii) (repealed and recodified from A.C.A. § 19-11-203(34)(A)(i)–(iii) by Act 419 of 2025).

¹⁵ 26 C.A.R. § 30-1124.

¹⁶ See Ark. Att’y Gen. Ops. 2004-129; 99-357; 99-136; 95-294; 94-286; 93-418; 91-308; 90-037; 90-030.

¹⁷ Ark. Att’y Gen. Op. 2004-129; A.C.A. § 19-65-101 (repealed and recodified from A.C.A. § 19-11-801(a)–(c) by Act 419 of 2025) (exempting such services from the state bidding requirement).

In contrast, if the agency's role is limited to facilitating media or ad space purchases without contributing to overall branding strategy or providing other specialized input, that work would likely not qualify as a personal service. In such cases, if the fee paid to the agency equals or exceeds \$20,000, the bidding requirement would apply. Importantly, only the amount paid by the school district to the agency for its services is relevant in determining whether competitive bidding is required—not the cost of the ad space itself.

Question 3: May a school district allow some or all proceeds from the sale of its intellectual/real property (broadcast rights) to go directly to an outside third party (such as a booster club) with such funds not passing through, nor being accounted for, in district coffers?

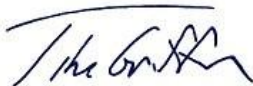
Yes, a school district may permit a third party, such as a booster club, to retain proceeds it raises from using district-owned intellectual property—like broadcasting rights—provided that the arrangement is authorized by the school district and provides a benefit to the school.

Arkansas law does not prohibit a district from granting limited rights to a third-party organization to use its intellectual property for fundraising purposes. Booster clubs are legally separate entities, typically organized as 501(c)(3) nonprofits, and they are responsible for managing their own finances and complying with nonprofit regulations. Because they operate independently, funds raised by booster clubs do not need to pass through district accounts unless those funds are later donated to the district.

While the funds need not pass through the district's accounts unless they are subsequently donated, the right to generate those funds originates from the district's property. As explained in response to Question 1, article 14, section 2 of the Arkansas Constitution requires that the use of school property ultimately benefit the school. Thus, a school board cannot simply give away valuable intellectual property to a third party for that party's private gain. A school district may grant permission to a third-party entity, such as a booster club, to use the district's intellectual property only if the board determines that the arrangement will benefit the district.

Assistant Attorney General Justin Hughes prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a stylized flourish at the end.

TIM GRIFFIN
Attorney General