Simi Valley USD – Fiscal Services
805.306.4500 www.simivalleyusd.org
101 West Cochran Street Simi Valley, CA 93065

Simi Valley Unified School District

Guidance on Raffles, 50/50 Raffles, Opportunity Drawings, and Silent Auctions

- School entities, including student clubs, are not authorized to participate in raffles because they are not nonprofit organizations as defined by the Franchise Tax Code.
- Raffles are defined as a means of raising money by selling numbered tickets, one or some of which are subsequently drawn at random, the holder or holders of such tickets winning a prize.
- Outside nonprofits, such as PTSAs and Booster Clubs, are authorized to participate in raffles IF they qualify AND file proper required paperwork annually as per Penal Code section 320.5.
- 50/50 Raffles are illegal for both school entities and PTSAs and Booster Clubs because they are only allowed by professional sports teams per Senate Bill No. 549.
- Calling a raffle an "opportunity drawing" does not exempt it from being a raffle. Per Penal Code section 320.5, subdivision (m), for the raffle to be exempt ALL three of the below must be true:

    1. It involves a general and indiscriminate distribution of the tickets.
    2. The tickets are offered on the same terms and conditions as the tickets for which a donation is given.
    3. The scheme does not require any of the participants to pay for a chance to win.

- Outside nonprofits, such as PTSAs and Booster Clubs may hold raffles on Simi Valley Unified School District properties if:

    1. A Facilities Use Agreement is filed.
    2. The raffle is not held during a school sponsored event, such as a football game or Back to School Night.
    3. The advertising and signage explicitly states that the raffle is associated with the non-profit and not the Simi Valley Unified School District.

- Silent Auctions are allowed by school entities if they are indeed auctions, where items are sold to the highest bidder, and not awarded by a random draw of tickets.

For additional information please see the following pages and the websites cited therein.

The below is from the *Associated Student Body Accounting Manual, Fraud Prevention Guide and Desk Reference,* 2015, FCMAT, pages 94-95, http://fcmat.org/2015-asb-accounting-manual-fraud-prevention-guide-and-desk-reference/

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Fundraisers That May Not be Allowed

The following are some of the types of fundraising events that governing board members and principals or other school administrators may not or should not authorize. These items need to be reviewed and discussed at the local level if ASB groups wish to consider them.

Cannot Allow:

• **Raffles** or games of chance. In California, charities and certain other private nonprofit organizations may conduct raffles to raise funds for beneficial or charitable purposes. However, school entities, including student clubs, are not authorized to participate in raffles because they are not nonprofit organizations exempt from state tax as defined in the Franchise Tax Code. Rather, school entities are exempt from tax by virtue of being a government entity.

It is possible for a private, nondistrict, non-ASB nonprofit group, such as a booster club, foundation, auxiliary organization or other parent-teacher organization to conduct raffles as long as the organization is a tax-exempt nonprofit organization with an approved tax identification number pursuant to Revenue and Taxation Code 23701d. The organization must have been licensed to do business in California for at least one year before holding the raffle and must register with the attorney general's Registry of Charitable Trusts before conducting the raffle, and ensure that written confirmation of the annual registration is received before holding the initial raffle. These nonprofit groups must register every 12 months and, for any given raffle, must ensure that the eligible organization uses at least 90 percent of the gross receipts from the sale of raffle tickets for charitable purposes. The group must also submit an annual report for all raffles conducted during the reporting year (September 1 through August 31) by September 1; the report must include gross receipts, expenses, net profit, and the charitable purpose for which they used the money. The raffle tickets and stubs must be numbered, and adults must supervise the drawing, which may not be conducted over the Internet.

What is a raffle? If a participant is required to purchase a ticket to have a chance to win a prize, the drawing is a raffle and is subject to the provisions of Penal Code section 320.5 and related regulations. Penal Code section 320.5, subdivision (m) states that a raffle is exempt from registration with the attorney general's office only if all of the following are true:

a. It involves a general and indiscriminate distribution of the tickets;

b. The tickets are offered on the same terms and conditions as the tickets for which a donation is given; and

c. The scheme does not require any of the participants to pay for a chance to win.

Many school groups print tickets with the words "suggested donation" on them and call it a drawing rather than a raffle. This does not make it legal unless the group is prepared to give anyone who requests a ticket as many tickets as they want for free (no donation). And even if a district does this, it still runs the risk of someone challenging the issue because it still has the appearance of a raffle. The only way to have a legal raffle is to work with an eligible nonprofit organization that has its own tax identification number, registers with the attorney general annually, and disburses 90% of the gross profits generated by the sale of the raffle tickets to a charitable purpose, as outlined above. Penal Code section 320.5 governs which organizations qualify and how the raffles must be conducted.

FCMAT is often asked if 50/50 raffles are legal. The quick answer is no, because 90 percent of the gross ticket sale revenue is not used for charitable purposes; instead, 50 percent of ticket-sale

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revenue is awarded as the prize and 50 percent is retained by the organization conducting the raffle. Penal Code section 320.5 is a criminal statute, so violations may be forwarded to the local district attorney, city attorney, or county counsel for investigation and possible prosecution. In addition, the attorney general may take legal action, under the provisions of the nonprofit corporation law, for breach of fiduciary duty or waste of charitable assets. The organization's raffle registration may also be suspended or revoked. For more information, see section 419.2(a) (2) of the raffle regulations, which can be found on the Office of the Attorney General's website at oag.ca.gov/charities/raffles.

The below is from the State of California Department of Justice website:
https://oag.ca.gov/charities/raffles

Do we need to register before holding a **silent auction**? Is silent auction a raffle?

A silent auction is not considered a raffle so a charity is not required to register with the Registry of Charitable Trusts before conducting silent auction activities. A silent auction is not a game of chance. Unlike a raffle where multiple participants pay for a chance to win a prize based on a random draw, a silent auction is a sale of an item to the highest bidder. Although a silent auction need not be registered with the Attorney General's Registry of Charitable Trusts, to find out if your silent auction event is subject to any restrictions, licensing requirements, or taxes, please contact the State Board of Equalization and/or your local law enforcement agency.

What is the 90/10 rule? Does it apply to 50/50 raffles?

Penal Code section 320.5, subdivision (b)(4)(A) states that 90 percent of the gross receipts generated by the sale of raffle tickets for any given draw are to be used by the eligible organization for charitable purposes. For example: An organization raised $100 in ticket sales. It would be required to spend $90 of that amount to further its charitable purposes, and only $10 could be used to help pay for expenses or operating costs associated with conducting the raffle.

The organization is not precluded from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting the raffle. However, the organization must exercise due care in using other funds. The misuse of restricted assets or the use of unrestricted assets which results in losses to the corporation may subject the board of directors to personal liability for breach of fiduciary duty.

50/50 raffles are those in which the prize winner receives 50 percent of ticket-sale revenue and the other 50 percent of the revenue is retained by the organization conducting the raffle. 50/50 raffles are illegal unless the organization qualifies under Penal Code section 320.6. Penal Code 320.6 established the 50/50 Major League Sports Raffle Program which is regulated by the Bureau of Gambling Control, not the Registry of Charitable Trusts. Most charities are still required to comply with the 90/10 rule.