

# Julia Hosford Barnes, P.C.

## Legal Memorandum

To: PEC  
From: Julia Barnes  
Re: Charter School Building Use by Outside Entities

Public schools may allow their buildings to be used for other purposes. The requirements vary by the purpose of the outside entity seeking to use the building.

Non-education related purposes. Charter School, as public schools, are subject to the anti-donation clause of the New Mexico Constitution. As the New Mexico Ethics Commission<sup>1</sup> identified: “The Anti-Donation Clause prohibits outright gifts of money or property to a private entity “with no exchange of adequate consideration.” *City of Raton*, 600 F. Supp. 2d at 1147 (citations omitted).

Where a governmental entity contracts to receive something of value in exchange for the transfer of money or property, there is no constitutional violation. *See City of Raton*, 600 F. Supp. 2d at 1161 (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration— money exchanged for a real product.”); *State ex rel. Office of State Engineer v. Lewis*, 2007-NMCA-008, 51, 141 N.M. 1 (appropriation to purchase and retire water rights no violation of the Anti-Donation Clause, because state received water rights in return for payment).”

Unrelated uses of a school building. A school may rent out its buildings. Payment of a rental fee allows a public school to comply with the requirements of the anti-donation clause. Several New Mexico public education institutions have provided policies for rental of school buildings for various events. For example, for the leasing of a building for a political event, Albuquerque Public Schools identifies political events as a Category 5<sup>2</sup> building request and sets out a fee structure for rental of a building, a portion of a building or support by staff.

The University of New Mexico has a policy on political activity<sup>3</sup>. It provides:

*This policy applies to faculty, staff, and students and addresses the appropriate use of space and resources for political activity on all of the University’s campuses.*

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<sup>1</sup> New Mexico Ethics Commission, [ADVISORY OPINION NO. 2022-04](#)

<sup>2</sup> The Category structure identifies how closely the request relates to the purposes of a public school and gives higher priority to a lower category request.

<sup>3</sup> <https://policy.unm.edu/university-policies/2000/2060.html>

200 West De Vargas, Suite 2  
Santa Fe, New Mexico  
87501  
Jhbnm1@gmail.com  
(505) 982-3993 Santa Fe phone and  
(505) 212-0604 fax (Albuquerque number)

The University is clear as what resources are not allowed to be used:

*Examples of University “resources” include, but are not limited to:*

- *the University’s name, logo, or other identifying marks*
- *funds, facilities, office supplies, photo equipment, letterhead, mailing lists, telephones, fax machines, copiers, and computers*
- *information technology such as email, websites, on-line discussion boards, and listservs*

*In order to assure its autonomy and integrity, the University shall not be an instrument of partisan political action. The expression of political opinions and viewpoints must clearly be those of the individual and not of the University.*

*As a public institution, the University respects the rights of political candidates, their representatives, and others to conduct political events on campus. Groups or individuals may rent facilities for speeches, debates, assemblies, and other events. Indoor facilities will be scheduled through normal procedures with the appropriate University office that oversees that facility. The standard facility-use fee for the specific facility will be charged.*

Community School’s Initiatives. New Mexico allows for a community use of public schools as part of its community schools initiatives, including the joint use of school buildings for other community purposes. These activities are codified in state law: [Community Use of School Buildings](#). These activities are considered part of the educational support provided by the school to the community. There are several policy papers from the Department of Education on the topic: [building-a-community-schools-system](#) and [Policy Framework for Joint Use](#). The community schools initiatives provide a strong framework for allowing more community uses for school buildings that support the school’s educational purpose. As these uses align closely to the school purpose and are part of a statutorily-expanded definition of the purpose of a school, they do not trigger the anti-donation clause.

