

Leave No Dollar Behind

Commercial Advertising and Public Schools

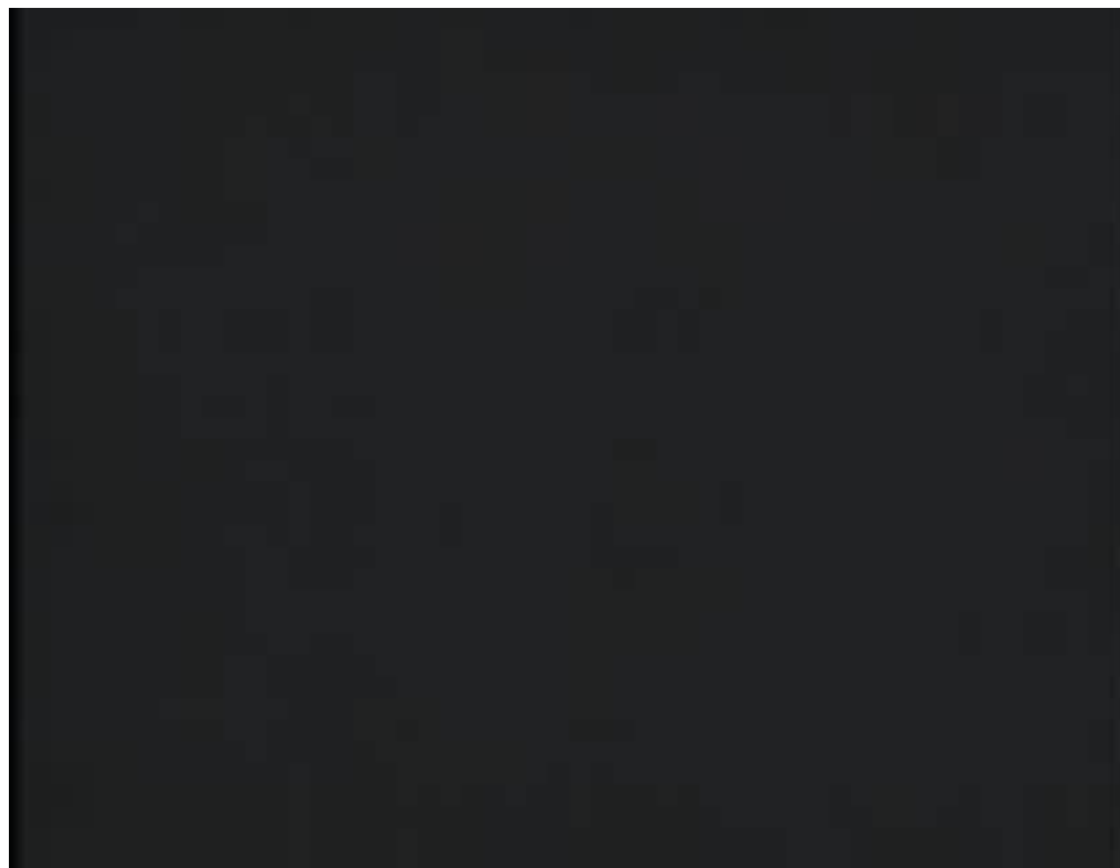
Name that Tune...

The Problem

- ▶ Duh!!
- ▶ The changing face of advertising – claims vs. associations



Then...



Now...



Historical Background

- ▶ Not a new phenomenon
- ▶ Signage at fields
- ▶ Publication ads
- ▶ Vendor exclusivity deals
- ▶ Uniform sponsorships
- ▶ Naming rights

The Opportunities

- ▶ New Jersey: \$100K for elementary school gym
- ▶ Mansfield (TX) HS Stadium: \$500K
- ▶ LA School District: \$18MM/year (per NPR)
- ▶ Education Funding Partners (edufundingpartners.com)

Legal Concerns

- ▶ First Amendment issues:
 - Signage
 - Advertising in school publications
 - Naming/Sponsorship rights
- ▶ Bad acts by the payor

1st Amendment 101

- ▶ 1st Amendment applies to **gov't** restrictions on speech
- ▶ School districts are the “government”
- ▶ Advertising is “speech”

1st Amendment 401

- ▶ Gov't speech = speech by the gov't
 - Gov't can say what it wants, no equal time required
- ▶ Public forum – traditional place for speech, e.g., parks
 - Very little control over content allowed
- ▶ Nonpublic forum – Gov't opens up non-traditional place, e.g., signage
 - Gov't can reasonably control groups or subjects, but ***not viewpoints***

Traditional Advertising

- ▶ Probably a nonpublic forum
- ▶ Standard: School can decide on types of groups it will permit to advertise, or limit ads to particular subjects
- ▶ School cannot discriminate based on viewpoint of prospective advertiser

Victory Through Jesus v. Lee's Summit Sch. Dist. (2011)

- ▶ Board policy permitted unlimited backpack distributions of flyers by groups that directly benefitted district
- ▶ Permitted other groups to distribute flyers once/year
- ▶ Owner of religious-based soccer camp claimed 1st Amendment violation

Victory Thru Jesus, cont.

- ▶ Policy driven by parent complaints over volume of non-school papers
- ▶ Nonpublic forum: District could permissibly decide that groups that directly benefitted it could distribute more often
- ▶ No evidence of intent to discriminate based on religious content or viewpoint

Lessons

- ▶ Thru board policy, you can (and should) decide on the general types of ads you will allow
- ▶ You can (and should) set standards for acceptable ads
- ▶ But, once you permit a type, you can't discriminate based on viewpoint

Ads in School Publications

- ▶ *Hazelwood* – Greater control allowed over school publications
- ▶ If you permit ads, you've probably created a nonpublic forum
- ▶ Must have guidelines on types of ads permitted
- ▶ *Planned Parenthood v. Clark Co. Sch. Dist.* – 9th Cir. upheld denial of ads

Naming Rights/Sponsorships

- ▶ Big dollars can lead to big problems
- ▶ Problem: Is it the school board's speech? (Complete control)
- ▶ Or, is it the advertiser's speech? (Much less control)
- ▶ No answers yet...but it will happen

Bad Acts by Payors



- ▶ Lesson # 1: Leave an out
- ▶ Lesson # 2: Don't spend all the \$\$ at once

Steps to Take

- ▶ Adopt a policy (KI, for instance)
- ▶ Decide what can be named – facilities (entire bldg) or areas within them (cafeteria, gym, stadium, etc.)
- ▶ Set criteria for advertising/naming
- ▶ Make clear that board controls all advertising and naming rights