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Memos from  
Office of Catholic Schools  
re: Independent Contractors  
(April 1992)



## THE ARCHDIOCESE OF SAN FRANCISCO

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TO: All Principals

FROM: Office of Catholic Schools

SUBJECT: Supplemental Programs at Schools/Independent Contractors

DATE: April 1992

Over the years various memoranda and policies have been sent out in the weekly mailer by the Office of Catholic Schools, Legal Department and Finance Office relating to the subjects of "employees", "independent contractors" and the leasing of school facilities. However, these offices have recently received a fair number of inquiries from the schools relating to the application of these items to specific matters (eg. proposals by parents of students, etc. who wish to conduct various supplemental programs on the school premises). Therefore, the Office of Catholic Schools, in consultation with the Archdiocesan Legal Counsel, is providing you with a focused update. Set forth below is a brief summary and response to the most frequently raised issues.

**Are these types of supplemental school programs permitted? Yes - Subject to certain conditions.**

1. First, if a particular program is not school owned or operated then, for property tax exemption and other reasons, no use of the school facility, whether through a formal lease, "donation arrangement" or otherwise, by a private individual or organization is permitted unless the user is a tax exempt (i.e. a nonprofit) organization. (The exception to this is the use of the parish hall; etc., for private celebrations, such as wedding receptions, which are incidental to religious ceremonies which take place at the parish.) Therefore, if an individual or organization proposes a program which the school wishes to facilitate (but not as a part of the school program) the organization must be tax exempt and the standard Archdiocesan lease form, which requires "hold harmless" and insurance protection, must be utilized.
2. If the person or organization is not tax exempt, but the principal is otherwise interested in, and consents to adding, a proposed class or program as an integral part of the school's program (whether during normal school hours or otherwise) the school may do so. The normal, least confusing, and legally cautious approach (both for IRS employee classification purposes and maximum administrative oversight) would be to simply hire the particular individual running the class or program as an employee of the school.
3. In exceptional circumstances (eg. where a parent, parishioner etc. is in the business of providing a unique service or program that the school wishes to engage in, it may be possible for the school to contract with such individual as an independent contractor to provide the service (similar to hot lunch food programs provided for on the premises by

private, for-profit food service contractors). However, under such circumstances, the program must still be a school program and the independent contractor must be able to provide appropriate hold harmless and insurance protection to the parish/Archdiocese. All fees, etc., collected in connection with the program must be paid to the school, not to the private individual. Any such independent contractor arrangement must be signed by the principal of the school as well as the officers of The Roman Catholic Welfare Corporation of San Francisco on a standard form which is available through the Office of Catholic Schools.

A reminder, however, that recent audits by the Internal Revenue Service have revealed that over 90% of the time individuals listed by various companies as "independent contractors" are in fact employees. Failure to properly classify an employee and to take out appropriate withholdings can result in assessments for back taxes as well as penalties. The general principle which the IRS operates from when examining the subject of employee/independent contractor status is as follows:

Generally the relationship of employer and employee exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.

The IRS examines 20 factors (not necessarily equally weighted) to evaluate these elements of control and direction. Classic independent contractors ordinarily do not have a continuing relationship with the organizations nor do they work set hours or follow specific policies and procedures of the employer. Examples include a plumber who comes to fix a leaky pipe at the school or an accomplished singer who travels the country and performs one night religious concerts at selected schools/parishes. As suggested earlier in reference to the Archdiocesan contract form relating to independent contractors, individuals must be able to demonstrate that they have their own business (i.e. have many other clients, a business license, card and office, liability coverage etc.), are able to perform the work without detailed supervision, and control and can furnish their own tools and materials necessary to perform the tasks at hand, etc.

In sum, the school must decide whether it is willing and able to establish an added school program. If the school wishes to facilitate a proposed program but does not want any direct involvement in the same, then (if the individual or organization is tax exempt) the premises can be leased using the standard Archdiocesan lease forms available through the legal office. If the individual involved is not tax exempt, then no use of the property is possible unless the program is integrated into the school. In such case it is highly recommended that the individual directing such program or activity simply be added as a paid employee of the school. If the school prefers that the matter be contracted out to a bona fide independent contractor then such arrangement must be established pursuant to, and comply with all of the terms and conditions of, the standard Archdiocesan form which must be executed by the appropriate Officers of The Roman Catholic Welfare Corporation.

For further information please contact the Office of Catholic Schools.