

Commercial Cash

How NY Schools Can
Raise Extra Money
Without Raising Taxes

by Peter Murphy

School districts across New York are constrained from fully exploiting a potential source of revenue to help offset pressure on local taxes. The revenue source in question is commercial advertising—including signs, sponsorships and facility naming rights, especially for athletic facilities.

Advertisements are a common revenue source for youth sports leagues and for nonpublic elementary and secondary schools. Commercial sponsorships and naming rights also are a big business in the higher education sector, exploited by both public and private institutions. And the sale of advertisements in school theater and yearbooks is common, even in New York public schools.

However, the ability of New York school districts to sell any form of commercial advertising on school property is commonly viewed as restricted by policies and legal guidance from the state Attorney General, Board of Regents and Education Department.

Experience in other states suggests New York school districts could raise thousands of dollars a year to as much as millions of dollars over a multi-year period by selling advertising and naming rights on their properties. These sums won't look large in the context of total school budgets, but at the margins they can help offset the cost of athletic and arts programs, as well as capital improvements and maintenance, which often are first on the chopping block when budgets are tight.

Under New York's local property tax levy cap, effective since 2012, every locally raised dollar counts more than ever. This report highlights key reforms needed to clear the way for New York school districts to stretch their dollars at least a little further.

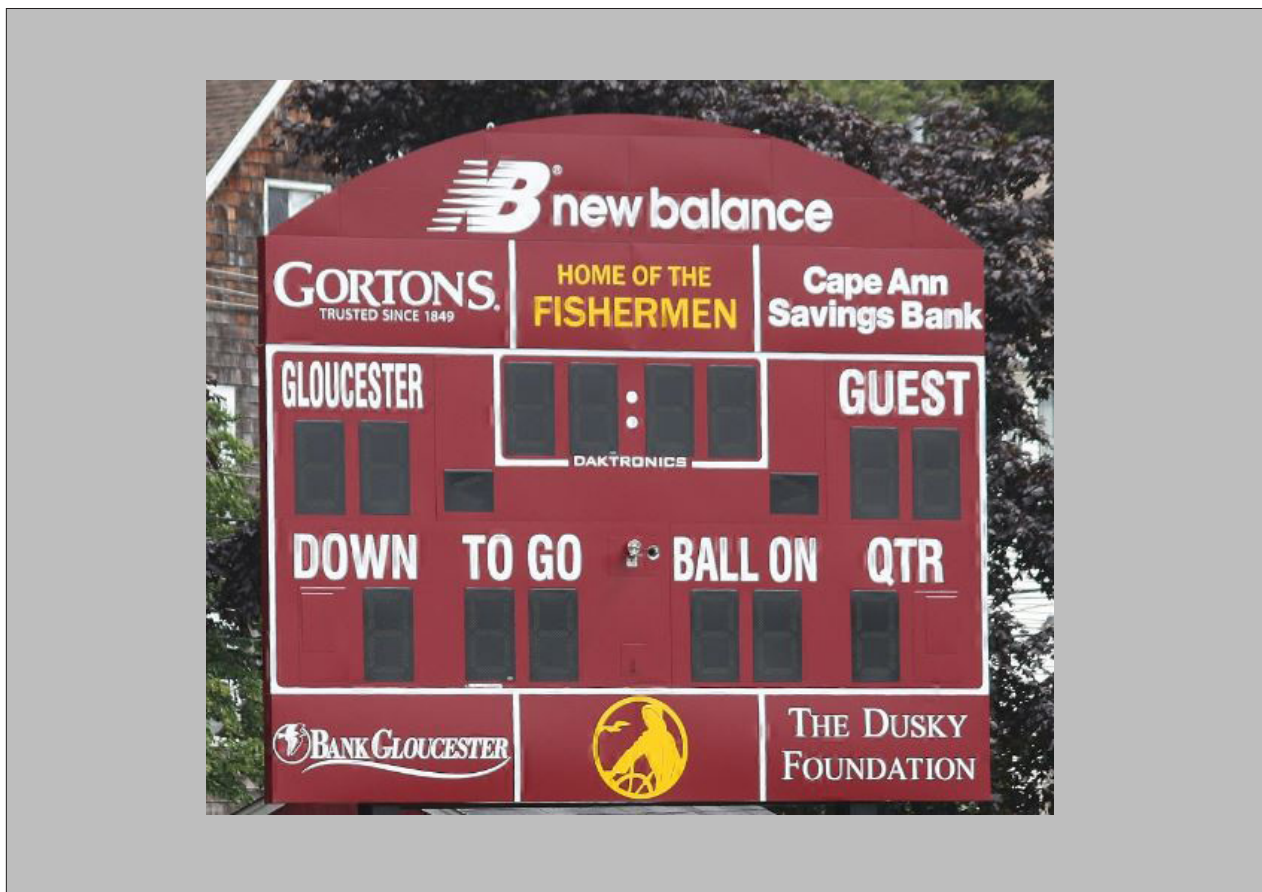
Other schools, other states

School districts across the country have sold naming rights and advertisement opportunities to raise funds. Based on a review of deals reported in local media, the prime purchasers of multiyear naming rights include regional banks and credit unions, healthcare providers, grocery stores and auto dealers. But the opportunities

are not limited to corporate sponsors; private individuals have also purchased naming rights to honor family members or former teachers.

The method of awarding naming rights varies as well. Some districts offer facility naming rights through a request for proposal (RFP) process, based on guidelines developed by school boards. In others, such as Pennsylvania, marketing firms broker naming rights deals. Advertising space on school buses has been sold through advertising agencies or school district cooperatives.

A sampling of highlights from several other states follows.



In 2011, the Gloucester school district in Massachusetts awarded naming rights to its outdoor athletic facilities to New Balance in exchange for \$500,000 over ten years.

Missouri

The 16,300-pupil Parkway school district in St. Louis County signed multiyear advertising contracts worth a total of \$1.3 million in the first three years after launching its sponsorship program in 2015. As of 2018, the district had 24 partnerships with businesses, according to the *St. Louis Post-Dispatch*. Advertising revenue, brokered through an outside firm, has financed the district's four video scoreboards, extracurricular activities and student sports.¹

Indiana

The 18,000-pupil South Bend school district last year signed a 10-year, \$300,000 deal that will attach the name of a local credit union to the football field. The school district also expects to generate \$3 million in the next three years from pursuing deals for other naming rights.² Elsewhere in Indiana, the 4,300-pupil Middlebury School District will get \$250,000 for five-year naming rights to its football field, and the 11,000-student Penn-Harris-Madison school will raise \$600,000 from naming rights deals for sports facilities, concession stands and music rooms, with the ultimate goal of underwriting a \$4 million endowment.³

New Jersey

In January 2018, the 16,125-pupil Toms River Regional Schools in South Jersey announced a five-year agreement under which a regional healthcare provider network will pay the district a total of \$637,500 for naming rights to a high school arena, while also collaborating on health education and wellness initiatives. This is the third revenue-raising naming rights contract for the same athletic facility, which over the prior decade had been sponsored by a spring water company and a regional auto dealer, respectively.⁴

Massachusetts

In 2011, the 3,000-pupil Gloucester school district awarded naming rights to its outdoor ath-

letic facilities to New Balance, the athletic shoe company, in exchange for \$500,000 over ten years. This revenue contributed toward rehabilitating an unusable sports complex.⁵ Allowing three local employers to place smaller ads on the scoreboard raised an additional \$150,000.⁶ The city of Worcester helped finance a renovation of its primary public school athletic facility by selling naming rights for \$1 million to a regional bank – which last year gave the city another \$500,000 to keep the name for another 10 years. The Worcester schools in Massachusetts have an enrollment of about 28,000, roughly the same as Rochester's public schools.⁷

Pennsylvania

The 1,432-student Peters Township High School in McMurray, outside Pittsburgh, agreed in 2018 to sell naming rights on its outdoor stadium to Syracuse-based Quadrant Biosciences Inc., for \$10,000 per year for three years. The facility will carry the name of ClearEdge, a Quadrant subsidiary that sells a diagnostic testing kit for brain injuries. The school also reached a deal to sell gymnasium naming rights to a local health care network for \$15,000 per year over six years.⁸

Elsewhere in Pennsylvania, the 8,800-pupil Chambersburg School District received a 10-year, \$100,000 grant from a local bank for its football stadium, although the bank (in a move with less tangible public-relations value) chose not to exercise its naming rights. Naming rights to the Chambersburg High School indoor track were sold to a credit union for \$18,000 total over three years.⁹

Texas

The Dallas Morning News reports at least 20 school districts around the state have sold naming rights for athletic facilities. They included a deal in which a local pediatric hospital will pay \$2.5 million over 10 years to the 7,000-student Prosper school district, outside Dallas. Also reported: 10-year deals paying \$3 million to the Lubbock school district, and \$2.5 million to the Katy school district, among others.¹⁰

Busing for bucks

Since Colorado pioneered the practice in 1997, at least 14 states have allowed the placement of small advertising signs on school buses.^{11,12} One of the most recent to authorize the practice was New Jersey, in 2011, where the experience reportedly has been mixed following an initial surge of interest. A random review of 21 New Jersey school district annual reports as of 2018-19 indicated that 13 reported some revenue from school bus ads, with amounts ranging from \$102 per bus in the Marlboro school district to \$3,300 per bus in Morris.

Fiscal benefit potential to New York

How much could New York districts raise by pursuing sponsorship and naming rights deals?

The answer depends on how avidly they pursue the opportunity. Beyond that, it seems safe to predict that athletic facilities in larger districts will be in a position to command larger fees.

As reviewed above, naming rights fetched millions of dollars in suburban Texas school districts, where the Friday night lights of high school football games can draw crowds of 10,000 people. Sums were smaller in Pennsylvania, where one private marketing agency working with school districts reports it commonly reaches 10-year deals for \$10,000 to \$15,000 a year.¹³ The Pennsylvania agreements may be a better model of what districts might raise in the smaller metro areas of upstate New York. But even these sums would be welcomed in the most hard-pressed districts with stagnant or even shrinking local tax bases.

In Gloucester, Ma., the school district's sale of naming rights to New Balance, one of the more lucrative deals to have gained notice anywhere

in the northeast region in recent years, will raise the equivalent of \$17 per pupil over 10 years. Even half that amount would be enough to catch the interest of any New York school district aiming to defray the costs of operating or upgrading athletic facilities—or, for that matter, theaters and other performance spaces.

Unfortunately, as commonly interpreted, Regents regulations have made it difficult if not impossible for New York schools to tap this potential revenue source.

Legal restrictions in New York

Local governments and school districts considering the use of sponsorships face a half-century of legal opinions and regulations. Why school districts aren't already allowed to implement these revenue-generators comes down to a historically restrictive application of the

New York State Constitution by the state Attorney General, the Board of Regents and the State Education Department.

The State Constitution, under Article VIII, which governs local finances,

provides that "No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking..."¹⁴ Barring the state Legislature's express permission, this section has been interpreted to prohibit districts from selling advertising.

School districts themselves are created and empowered by the Legislature by statute, meaning any powers they have must be spelled out in, or be clearly inferred from, the underlying language. The law details what school districts are allowed to do; anything outside of that permissive language is largely considered prohibited. Accordingly, sponsorship agreements with school districts

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and other municipalities are largely absent in New York not because they've been banned, but because they haven't been explicitly authorized by the Legislature.

In 1973, one of the country's earliest naming rights deals was inked in Western New York, as Buffalo-based Rich Products agreed to pay Erie County \$1.5 million over 25 years for the rights on the Buffalo Bills' stadium in Orchard Park. That same year, Niagara County sought state permission to place advertisements in a county building. But absent "express legislative sanction," then-Attorney General Louis J. Lefkowitz wrote in an informal opinion, "no municipality may engage in the private business of advertising or allow its building or property to be used for advertising purposes."

The opinion has been cited in subsequent opinions of the Attorney General, State Comptroller and State Education Department. It has been taken so far as to thwart a village looking to defray the cost of a printed bulletin with ads. But some activities have been exempted from this de facto ban on the basis that it can defray the cost of a government function and thus "serves a public purpose," allowing the city of Kingston, for example, to sell advertisements on city-operated buses.¹⁵

Regents regulatory framework

While the State Constitution is arguably vague regarding commercial activity on municipal or school district property, the Regents have set regulatory standards that prohibit ads on school buses, athletic facilities or newsletters; billboards on school property; and corporate messages on a school jumbotron, as examples.

Specifically, the Regents prohibit school dis-

tricts from entering into agreements that "permit commercial promotional activity on school premises" with an allowance for "commercial sponsorship of school activities."¹⁶ Hence, the Regents make the important distinction between commercial promotional activity on school property—which they define as "designed to induce the purchase of a particular product of service"—and commercial sponsorship – which is defined as "underwriting of an activity on school premises" which does not promote a particular product or service.¹⁷

The Regents rules have been applied by the State Education Department, through decisions of the Commissioner, to determine whether a particular

naming rights agreement or commercial presence in a school is permissible. Two conditions must be satisfied:

1. The action must have a school purpose which is determined by:
 - a. receiving local board approval,
 - b. providing equal opportunity to all prospective vendors; and
 - c. having students fully involved in the process;
2. The school district must be the recipient of the primary benefit of the agreement.¹⁸

Applied strictly, these standards can be difficult to meet. One authority on New York education law has suggested that "if the only purpose that can be articulated is raising funds, the 'school purpose' test may not have been met."¹⁹

School advertising prohibitions

Some avenues of revenue generation are expressly prohibited. In response to a 1989 proposal by the cable company Channel One to

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provide free television equipment and educational content underwritten by advertisements, the Board of Regents issued a sweeping regulation prohibiting districts from entering into arrangements involving commercial promotional activity being promoted “electronically.”²⁰

Despite being enacted two years before the first test of the World Wide Web, that regulation, known as the Channel One decision, was subsequently interpreted in 2000 by the State Education Department to include content on the internet, resulting in a de facto prohibition of ad placements on any of New York’s hundreds of school district websites.

School districts interested in selling bus advertisements face less ambiguity: Vehicle and Traffic Law §375 outlaws the placement of “any sign, placard or other display except as provided by law” on any student transport designed to carry seven or more passengers. Though the statute exempts New York City, a city ordinance restricts signage from most vehicles, including school buses.

New York’s first and only major foray into sponsorship agreements came amid the soft-drink marketing wars of the 1980s and 1990s. During that era, school districts were approached by soda companies offering cash payments in return for exclusive “pouring rights” on school property.

The education commissioner issued a model pouring rights contract in 1998 based on the “implied” authority to enter into such agreements under districts’ broader authorization to provide food and beverages to students. New York school districts were quick to capitalize on the opportunity, with some districts inking agreements that paid them over \$100,000 annually.²¹ Subsequent Commissioner’s legal decisions provided that such agreements were permissible.²²

Early pouring rights contracts served as conduits to allow for the otherwise precluded sale of advertisements to the soda companies. In 1998, for example, the Brittenkill Central School District in Rensselaer County incorporated placement of Coca-Cola’s name on its athletic scoreboards as part of a \$150,000 deal.²³ But subsequent legal challenges resulted in parts of pouring contracts being invalidated by the Education Department.²⁴

Concerns of the Department about sponsorship deals from pouring rights were related to the use of school property to promote a particular brand of soft drink. Other types of promotion, such as theater and yearbook program ads, have long been permitted but legal precedents create doubt that other types of commercial sponsorship will pass muster with the Education Department.²⁵

Some districts have exploited the distinction in Regents rules between commercial promotion and sponsorship to generate at least some revenue. Schools have accepted “donations” of items with the vendor’s name or logo, in keeping with the legal distinction between acknowledgement of a donation and the prohibited commercial promotional advertising.

As a recent example, the 4,800-pupil Guilderland Central School District, outside Albany, a few years ago secured the donation of a \$15,000 scoreboard for its athletic field by the Albany Medical Center. The hospital’s name appears on the scoreboard, with no other promotional verbiage. But based on Pennsylvania rates, if state rules allowed it, the local board might charge a major regional healthcare provider \$15,000 every year for naming rights to its athletic facilities.

Local government advertising

Unlike school districts, New York county and municipal governments have been more willing

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to strike deals with private commercial interests to sponsor events or place advertisements in municipal sports facilities. Likewise, generations of former New York little leaguers wore uniforms bearing commercial logos, playing in fields bedecked with advertising for insurance agencies, auto dealers, restaurants and other local businesses.

Nonetheless, as noted in a 2012 audit, Onondaga County's comptroller wrote that, even as the county was collecting \$150,000 per year for sponsorships featuring naming rights and corporate branding on buildings in county-run parks, "it is technically, per our Law Department, impermissible to sell naming rights."²⁶

The Lefkowitz opinion speaks to the need for "legislative sanction." But absent that permission, local governments have developed a variety of workarounds:

- Onondaga County, by legislative resolution, renamed parts of its zoo "in recognition of the exemplary philanthropic efforts" of the donor, Wegmans Food Markets, rather than as a term of an advertising agreement.
- Payments for the naming rights on Albany County's indoor arena, currently the Times Union Center, are made to a management company rather than the county itself.
- Naming rights payments for Nassau County's Coliseum are made to the developer who holds a 30-year lease on the site.
- Local development corporations, quasi-public entities created by local governments to serve a public purpose, operate outside the constitutional restriction cited in the Lefkowitz opinion. The Town of Ramapo LDC collected \$124,609 from naming rights deals during 2014.
- Suffolk County on Long Island adopted a resolution in 2009 to promote corporate sponsorship or sale of naming rights of suitable county facilities, parks and roads.²⁷

Some Suggested Ground Rules

If the state clears away the perceived legal obstacles, school boards will need to establish clear criteria to govern the sale of advertising, sponsorships and naming rights.

Such criteria should:

- Specify the particular school properties—such as school buses, auditoriums and football fields—that could display advertising or be named for a corporate sponsor.
- Define the types of products, services and businesses that could purchase or lease promotional space on school property.
- Establish a pricing structure for various options for advertising and naming rights, based on comparisons with similar school districts, public visibility and other criteria.
- Create a process for soliciting and considering proposals for naming rights or advertising, including a public comment period.
- Set conditions for contract termination prior to contract expiration.

The state's public authorities, meanwhile, have had a free hand to engage in sponsorship activities. The Metropolitan Transportation Authority, which has long sold advertisements in its facilities, in 2009 leased the naming rights for a Brooklyn subway station for \$4 million over 20 years. Likewise, the state's regional public transportation authorities sell advertisements on bus stops and on buses themselves.

State government itself is no stranger to revenues from naming rights deals: the 4,538-seat sports facility at the State University of New York at Albany was renamed the SEFCU Arena, after the State Employee Federal Credit Union agreed in 2006 to pay \$2.75 million over 10 years.

Legislative history

Going back at least to 2011, state legislators have been introducing bills that would create the permissive language needed to let school districts raise new revenue.

Legislation with bipartisan support in both houses was proposed in 2011 that would allow municipalities to lease naming rights for government-owned property for up to five years.²⁸ However, this legislation did not include school districts. Neither bill emerged from ei-

ther the Senate or Assembly Local Government Committees.²⁹

Other bills that would have authorized schools to sell advertising on the exterior of school buses was introduced in the 2011-12 and 2013-14 legislative sessions, but also failed to advance out of either chamber's Education Committee. A bill introduced in January 2015 that would permit schools to sell advertising space on school athletic fields was passed by the Senate but failed to move out of the Assembly's Education Committee.³⁰ This same bill was reintroduced in the 2017-18 legislative session and passed the Senate in both years, only to again die in the Assembly Education Committee.³¹

In the current 2019-2020 legislative session, a bill to authorize school districts to sell advertising on outdoor school athletic facilities remains in the Senate Education Committee.³²

Recommendations

New York school districts that struggle to control spending – on things like employee salaries, pension contributions, health care costs and state mandates – while attempting to remain within the property tax cap could pursue commercial activities to prevent teacher layoffs and program reductions.

As other states maintain and bolster their programs through naming rights agreements, sponsorships and advertisements on school buses and athletic facilities, New York stands increasingly isolated in its abstention from these practices.

Lawmakers can free school districts from the current regulatory quagmire by eliminating legal barriers and permitting local decision-making. This would be accomplished by:

- Passing legislation authorizing certain commercial activity including, but not limited to, commercial advertisements, event sponsorships and naming rights deals;
- Reversing, legislatively, the broadly inter-

preted 1989 Regents' decision regarding electronic promotional content and granting decision-making authority to local boards of education; and

- Repealing the state and New York City prohibitions on school bus advertisements.

Not every school district will choose to pursue the options laid out in this report, but they should have the right to make that choice for themselves.

The dollars involved will look small in the context of a typical district's total annual budget. But giving schools discretion to pursue advertising and naming rights deals is a way of making sure every dollar counts.



Children's Health Hospital will pay \$2.5 million over 10 years to the 7,000 student Prosper school district outside Dallas.

ENDNOTES

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- ¹⁷ Rules of the Board of Regents, 8 NYCCR Part 23.1.
- ¹⁸ New York State Education Department, Commissioners Decision, Appeal of Tarolli, 38 Ed. Dept. Rep. 60 (1998) and Appeal of Gary Credit Corporation, 26 Ed Dept Rep 414 (1987)
- ¹⁹ “Alternative Sources of Revenue for School Districts: Dos and DON’Ts,” Ahearn, Kathy A., The Reporter, Summer 2014, Volume 62, No. 1.
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