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Charter School “Friends Of” Organizations FAQ

In the context of a charter school, a “Friends Of” organization is a separate, 501(c)(3) not-for-profit corporation that is created to raise funds, awareness, and otherwise support a charter school or the charter school movement. This Legal Alert answers common questions that charter school planners and organizers may have about forming such an organization.

1. How can I form a “Friends Of” organization?

Charter school planners and organizers may form a “Friends Of” organization to provide support to the school by forming either a supporting organization (SO) under Internal Revenue Code (IRC) § 509(a)(3) or a standalone entity under IRC §§ 509(a)(1) or (a)(2). The process for forming an organization under IRC § 509(a)(1)-(3) is generally the same: incorporate and apply for federal tax exemption using Form 1023 or 1023-EZ.¹ SOs carry out their exempt purposes by supporting one or more other tax-exempt organizations, usually other public charities. Organizing as an SO allows the organization to avoid being classified as a private foundation, which would subject the organization to a more restrictive regulatory regime. To qualify as an SO, an organization must meet certain organizational, operational, and control tests.² However, most “Friends Of” organizations are not SOs because they have enough donors to meet the public support tests under §§ 509(a)(1) or (a)(2).³ Read more about SOs in our Supporting Organizations Legal Alert [here](#).

2. What is the alternative to organizing a “Friends Of” as a supporting organization?

As an alternative to forming an SO, charter school planners or founders could set up a standalone independent 501(c)(3) organization pursuant IRC §509(a)(3). A “Friends Of” formed as a standalone entity would not need to meet the particular organizational, operational, control, relationship, and other tests that an SO must meet. A “Friends Of” organized as a standalone entity must meet the criteria of being a public charity. An organization must prove that it is a publicly supported charity by demonstrating that it obtains a “substantial portion” of its financial support from the “public” (this includes private individual and corporate contributions, as well as government grants). The organization must also show multiple sources of funding. Generally, the “Friends Of” must derive at least one-third of its total revenues from “public” contributions and grants. Note that a “Friends Of” organized as an SO is not required to meet the public support test itself, but the supported organization (the charter school) must still qualify as a public charity.

3. Are gifts to a “Friends Of” organized as a standalone entity tax deductible?

Yes. The tax-exempt status of a “Friends Of” organization organized as a standalone entity is not tied to the tax-exempt status of the charter school. If the school’s charter is revoked or renewed, the

¹ See Lawyers Alliance’s Legal Alerts on [deciding where to incorporate](#); what to know before [applying for an EIN](#), which you’ll need to apply for tax exemption; information about [state and local tax exemption](#); and information about the [1023-EZ](#).

² See Lawyers Alliance’s Legal Alert on [supporting organizations](#).

³ Public Charity Support Test, Internal Revenue Service, <https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-form-990-schedules-a-and-b-public-charity-support-test>.

standalone “Friends Of” can continue to exist and support other charter schools (provided the purposes clause may need to be amended in the Certificate of Incorporation).

4. Can I form a “Friends Of” organization before the charter has been issued?

Yes. Given the substantial amount of fundraising and organizational activity that must be completed before a charter school is actually formed, many groups forming charter schools form a “Friends Of” organization before the charter is issued to aid in the development of the proposed school. Forming a “Friends Of” before the school is formed allows school planners and organizers to complete the preparatory work like opening a bank account, disbursing monies, soliciting donations under an existing 501(c)(3) tax-exempt entity, and finding facilities space. However, because under IRC §509(a)(3) an SO must usually name an organization already in existence and that already has a 501(c)(3) designation, the only option available for charter school planners and founders who want to form the “Friends Of” organization prior to the school receiving its charter is to form a standalone entity.

5. Are there any particular issues to watch out for when forming a “Friends Of” organization before the charter has been issued?

If a charter school is going to form a support or fundraising organization before the school is formed, organizers should pay particular attention to the construction of the “Purpose Clause” when drafting the Certificate of Incorporation. A purpose that narrowly focuses on the support of the proposed charter school (e.g., “to support the development of the ABC Charter School”) may prove problematic in the IRS’ evaluation of the organization’s application for tax exemption. Since the charter school will not be formed until after the charter is issued and after the support and fundraising organization is established, the IRS may not, and will most likely not, issue 501(c)(3) tax exemption to a group that claims to support an entity that is not yet in existence. In essence, there is no charitable or educational purpose if the entity does not exist. To avoid this, it might be prudent to draft a purpose clause that contains language that encompasses charitable and educational endeavors or the general charter school movement but does not focus specifically on the proposed charter school.

6. What are common uses of “Friends Of” organizations in the charter school context?

“Friends Of” can hold real estate for charter schools, such as leases. For example, “Friends Of” organizations can act as the sub-landlord to the charter school in order to include utilities and other expenses as part of its total rent, which is often covered by New York City funding.

“Friends Of” can also hold funds for charter schools and hire operational employees to manage the charter school’s investments and keep liability separate from the operations of the school itself.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert, please visit our website at www.lawyersalliance.org for further information.

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