



## Contractual Obligations and Vendors

Schools that are closed do not need many of the products and services they use daily such as transportation, janitorial services or supplies. The vendors who provide these goods and services may ask the district to continue to pay even though the district no longer needs the goods or services. Remember that school districts cannot simply give away public funds to sympathetic vendors. Those funds must be spent on the needs of the school district.

Before you write the check, do the following:

### **1. Read the contract you have with the vendor.**

Read the contract carefully. The contract may specifically address situations where the district's needs change dramatically. Some contracts require renegotiation or payment of a minimal amount in those situations. Understand the contract language before making any specific decision.

The contract may have a Force Majeure clause. Such a clause relieves one or both of the parties from fulfilling their obligations under the contract if an event which is outside the reasonable control of the district or vendor occurs.

Find the termination clause. The contract should explain the options for terminating the contract prior to completion and what the penalties may be. It might be to the district's advantage to terminate the contract completely.

### **2. If the contract is set up so that payment is not owed if services are not actually provided, the district cannot pay the vendor. Follow the Missouri Constitution.**

School districts and other governmental entities are prohibited under the Missouri Constitution from giving tax dollars away to individuals or corporations. See Mo.Const. Art. VI, §25. Once a binding contract has been entered into and performance has begun, the district cannot pay a vendor more than is owed under the contract. See Mo.Const. Art. III, §39(3).

Courts have recognized an exception if there is a "public purpose" for the payment. However, school districts must be able to justify how such a payment would benefit the school district – not an individual or a company.

### **3. Negotiate**

When the district clearly owes a vendor, even if the products or services are not being used, the district should consider renegotiating with the vendor. School districts are excellent customers that pay their bills. Many vendors want to do business with school districts and are willing to make concessions for good customers.