

January 17, 2012

Albert Robles, Esq.
125 East 214th Street
Carson, CA 90745

Re: Your Request for Advice
Our file No. A-11-244

Dear Mr. Robles:

This letter responds to your request for advice on behalf of Baldwin Park Unified School District Board Member Blanca Estela Rubio regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ There are other bodies of law, separate from the Act's conflict-of-interest provisions including Government Code 1090 and your agency's conflict of interest code, which may apply to the situation you have described and that may identify incompatible activities pertaining to the office held.

QUESTION

May Ms. Rubio as an elected board member of the Baldwin Park USD also work as a consultant to the Berkshire Group?

CONCLUSION

Yes. Based on the facts you present, Ms. Rubio will not be making, participating in making, or influencing any governmental decision before the Baldwin Park USD so she will not have a conflict of interest under the Act.

FACTS

You are requesting advice on behalf of Baldwin Park Unified School District Board ("Baldwin Park USD") Member Blanca Estela Rubio. Ms. Rubio serves as one of five elected boardmembers of the Baldwin Park USD. She is also employed as a teacher at Fontana Unified School District ("Fontana USD"). Recently, Fontana USD awarded a contract to The Berkshire

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Group, a consulting company from New Jersey that wishes to expand its business in California. Currently, The Berkshire Group has about half a dozen clients in California.

Ms. Rubio and Mr. Robert Horowitz, president and CEO of The Berkshire Group, had a conversation about her possibly helping to introduce The Berkshire Group to other school districts. As a teacher and a three-term elected school board member, Ms. Rubio has established herself as an educator and is familiar to many school board members throughout California. She may help generate more business opportunities for the Berkshire Group by making introductions to other school districts.

One of the other current clients of The Berkshire Group is a joint powers authority administered by the Los Angeles County Office of Education called the East San Gabriel Valley Special Education Local Plan Area (“SELPA”), which oversees all of the special education classrooms and services for a vast geographic area that encompasses four charter schools and ten school districts. These include: Opportunities for Learning I Charter School; Opportunities for Learning II Charter School; The School of Arts and Enterprise Charter School; San Jose Edison Academy Charter School; Walnut Valley USD; Basset USD; Bonita USD; Charter Oak USD; Covina-Valley USD; Claremont USD; Glendora USD; Azusa USD; West Covina USD and Baldwin Park USD.

Ms. Rubio had no say as to whether SELPA would retain the consulting services of The Berkshire Group. The matter was never presented to nor discussed by the Baldwin Park USD. In addition, the decision to retain The Berkshire Group was independently made by SELPA.

Ms. Rubio and The Berkshire group wish to enter into a contractual consultant agreement where Ms. Rubio would introduce The Berkshire Group to possible business opportunities with other school districts throughout Los Angeles County and California in return for payment from The Berkshire Group for a successful business outcome.

You wish to know whether Ms. Rubio as an elected board member of the Baldwin Park USD is barred from working as a consultant to the Berkshire Group.

ANALYSIS

Section 87100 of the Act provides that “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Regulations 18700 through 18709 set forth an eight-step analysis in determining whether a public official has a conflict of interest in a governmental decision he or she will be making.

Step One: Is Board member Rubio a “public official” within the meaning of Section 87100?

Section 82048 defines a public official as “every member, officer, employee or consultant of a state or local government agency.” As a board member of the Baldwin Park USD, which is a local government agency, Ms. Rubio is a public official.

Step Two: Will Board member Rubio be making, participating in making or influencing a governmental decision?

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a governmental decision if, for the purpose of influencing the decision, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

You state that there is currently no existing contract or plans for any contract between Baldwin Park USD and The Berkshire Group. With respect to other decisions, Ms. Rubio will not be making or participating in those decisions because she is not a member of these bodies or school districts. In addition, you stated that Ms. Rubio did not have any input or participation in SELPA or Fontana USD’s existing contract with The Berkshire Group.

Based on the facts you have presented, there does not appear to be any decision before Baldwin Park USD that Board member Rubio can make, participate in making, or influence.

Because Board member Rubio will not be making, participating in making or influencing a governmental decision, she does not have a conflict of interest under the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl