



California Fair Political Practices Commission

October 14, 1987

Neil G. McNiece
Haight, Dickson, Brown & Bonesteel
201 Santa Monica Boulevard
P.O. Box 680
Santa Monica, CA 90406

Re: Your Request for Advice
Our File No. I-87-252

Dear Mr. McNiece:

You have requested assistance concerning the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter indicates that your request is on behalf of the Board of Education of the Palm Springs Unified School District and not on behalf of the three board members whose duties under the Act are in question. Because your request does not appear to be authorized by the officials whose duties under the Act are in question, we are unable to grant your request for advice. (See Regulation 18329(b)(8)(B), copy enclosed.)

Your question concerns the ability of three members of the Board of Education of the Palm Springs Unified School District to participate in decisions concerning the settlement of a lawsuit filed against the board and against the three board members in their individual capacity. Enclosed is a copy of a recent advice letter (No. A-87-226), which addresses a related question. Also enclosed is a copy of a Commission opinion, In re Hudson (1978) 4 FPPC Ops. 13, which describes the procedure to be followed when a public agency is unable to act because of the number of members who must disqualify themselves from participating in a decision under the conflict of interest provisions of the Act.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

T-801-252

For incoming enclosures,
see "Extra" file located in
file cabinet.

HAIGHT, DICKSON, BROWN & BONESTEEL

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IN REPLY REFER TO:

#29410

September 28, 1987

Legal Division
California Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

RE: EUNICE JONES v. PALM SPRINGS UNIFIED SCHOOL DISTRICT,
BOARD OF EDUCATION OF THE PALM SPRINGS UNIFIED SCHOOL
DISTRICT, SUSAN MARX, MINNA MARYANOV, MICHAEL McCABE
AS INDIVIDUALS AND AS MEMBERS OF THE BOARD OF EDUCATION, etc.

Riverside County Case No: INDIO 42229

Dear Sir or Madam:

This office represents the interests of the Palm Springs Unified School District as well as the interests of the Board of Education of the Palm Springs Unified School District in the captioned litigation. Enclosed with this letter is a copy of plaintiff's Second Amended and Supplemental Complaint which is the operative Complaint on file at this time.

The Complaint contains Causes Of Action for Breach Of Contract, Breach Of The Covenant Of Good Faith and Fair Dealing, Inducement Of Breach Of Contract, Conspiracy To Induce Breach Of Contract, Defamation, Conspiracy To Defame, Flase Light Invasions Of Privacy, and Conspiracy To Depict Plaintiff In A False Light and Invade Her Privacy.

The Plaintiff, Eunice C. Jones, is the former superintendent of schools for the Palm Springs Unified School District. Ms. Jones had a written contract with the Board of Education under which she was to be employed as Superintendent of schools for the Palm Springs Unified School District from June 1, 1983 through June 1, 1986. On or about May 23, 1984, a majority of the five-member Board of Education voted to relieve Ms. Jones of her duties as Superintendent of Schools. On or about May 29, 1984 a majority of the five-member Board voted to hire Leland Newcomer to serve as in-term Superintendent, to reassign Ms. Jones to another position in the district, and to select or aid in the selection of a replacement to serve as Superintendent. Each of the above-mentioned votes of the Board were three votes in favor, two votes against. The three members of the Board voting in favor were Susan Marx, Minna Maryanov, and Michael McCabe who have been named as defendants in this lawsuit both in their individual capacity and as members of the Board of Education. These three individuals

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are represented by the firm, Chase, Rotchford, Drukker & Bogust in their individual capacity.

Ms. Jones was subsequently assigned a teaching position which she currently holds as a fourth-fifth grade teacher at the Cathedral City Elementary School in the Palm Springs Unified School District. Following her demotion, a recall campaign was organized by supporters of Ms. Jones, who sought to recall Marx, Maryanov, and McCabe from their positions on the Board because of their votes to remove Jones as Superintendent. The recall election failed, Marx, Maryanov and McCabe are all still members of the Board of Education. Ms. Jones filed two legal actions, first was a Petition For Writ Of Mandate to reinstate her which has resulted in two Appellate decisions. One published and one which was ordered not to be published. A copy of the unpublished, Second Appellate decision is enclosed with this letter for your review. The original published decision published as Jones v. Palm Springs Unified School District appears at 170 Cal. App. 3d 518. Since the term of Ms. Jones' contract had expired as of the date the Second Appellate decision was handed down, she was not reinstated as Superintendent. The Board and the district have some insurance coverage for the claims made in Ms. Jones' Complaint. To the extent that Marx, Maryanov, or McCabe may be found to have been acting within the course and scope of their employee or in their official capacity as members of the Board while doing any of the acts alleged in the Complaint, they would also be afforded insurance coverage. However, the Complaint contains numerous allegations against each of the three individual defendants alleging they were acting outside of their official capacity for which, apparently, there would not be insurance coverage. Further, the Complaint contains punitive damage allegations against each of the individually named defendants. The plaintiff's current demand for settlement is in the amount of \$675,000. A review of the Second Amended Complaint reveals that the punitive damage allegations alone against the individual named defendants create a situation where these defendants by necessity have a financial interest in any decision by the School District or Board of Education to contribute money to any possible settlement of this case. Pursuant to Government Code §87100 et seq. each of the individual named defendants are prohibited in participating in a decision of the Board regarding settlement of this case. As previously mentioned, there are five members of the Board, therefore, a majority of the Board is disqualified under Government Code §87100, and at the present time, the Board is powerless to make any decision regarding any possible settlement or for that matter, is powerless to participate in settlement discussions.

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For the foregoing reasons, the Board of Education and the Palm Springs Unified School District hereby formally request that the fair political practices commission issue an opinion pursuant to Government Code §83114 stating how the Board should proceed in setting the duties and obligations of Marx, Maryanov, and McCabe.

Also enclosed for your review are copies of the Verified Answers of the Board Of Education, the School District, Marx, Maryanov, and McCabe.

This case is currently set for a Mandatory Settlement Conference on October 16, 1987, and is set to go to trial on November 9, 1987 in the INDIO Branch of the Riverside Superior Court. If any further information or documentation regarding any aspect of this litigation will aid you in advising either the individual Board members, or the School District and Board of Education please immediately notify the undersigned and/or contact Daryl DeCuir, Esq. of the Chase, Rotchford, et al., firm.

It is requested that the commission provide copies of its opinion to the attorneys both for the Board and the District and to the attorneys for the individual defendants in their individual capacity.

Very truly yours,

HAIGHT, DICKSON, BROWN & BONESTEEL

BY: Neil G. McNiece
NEIL G. McNIECE

NGM:ams
Enclosures
cc: Daryl Decuir, Esq.