



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

March 7, 2011

Diane Eisenberg
Deputy Attorney General
Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102-7004

**Re: Your Request for Advice - Opinion No. 11-027
Our File No. I-11-027**

Dear Ms. Eisenberg:

This letter responds to your request for the views of interested parties prior to your issuing a formal opinion on the following question: Is a charter school, and members of its board of directors, subject to (a) the Ralph M. Brown Act; (b) the California Public Records Act; (c) the Political Reform Act of 1974; (d) Government Code Section 1090; or (e) review, inspection of books and records by a Grand Jury formed pursuant to Penal Code section 888? You have received the request for an opinion on this question from Robert M. Burns.

In our reply, we restrict our comments to the applicability of the Political Reform Act (the "Act")¹ to your question. The Fair Political Practices Commission (the "Commission") does not have the jurisdiction to render advice regarding the Brown Act, the Public Records Act, Government Code Section 1090 or the Penal Code. Because your question is general in nature, we are treating your request as one for informal assistance.²

The provisions of the Act implicated in your question deal with conflicts of interest. The purpose of the conflict-of-interest provisions of the Act is to ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

interests or the financial interests of persons who have supported them.” This purpose is carried out by requiring public officials to publicly disclose their economic interests in accordance with the conflict-of-interest code developed by their respective agency, and by prohibiting their participation in governmental decisions that will have a reasonably foreseeable material financial effect on their economic interests.

Public officials governed by the Act include “every member, officer, employee or consultant of a state or local government agency . . .” (Section 82048.) Local government agency means a “county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.)

Education Code 47600 et seq. provides for the establishment of a charter school by the granting of a charter for the operation of the school by the governing board of a school district. The Commission’s longstanding advice has been that charter schools organized under Education Code section 47600 et seq. are local government agencies and that members of a charter school’s board of directors are “public officials.” (*Walsh* Advice Letter, No. A-98-234).)³

We have addressed other issues regarding the application of the Act’s conflict-of-interest provisions to charter schools. For example, we have advised that a charter school organized under Section 47600 et seq. of the Education Code must either adopt a conflict-of-interest-code or be incorporated in the conflict-of-interest code of its authorizing agency. (*Fadely* Advice Letter, No. A-02-223). In *Hamai*, (Advice Letter No. A-10-091), we advised that, under certain circumstances, board members of a nonprofit organization that operates a charter school are subject to the conflict-of-interest provisions of the Act, including disclosure of financial interests pursuant to a conflict-of-interests code.

Accordingly, charter schools and their board members are subject to the Act, as specified above. We believe that any other conclusion would be contrary to a stated purpose of the Act: “Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.” (Section 81002(c).)

³ In the *Walsh* Advice Letter, we advised that charter schools are local government agencies after applying factors established in the Commission’s Siegel opinion (*In re Siegal* (1977) 3 FPPC Ops. 62.) The factors are (i) whether the impetus for formation of an entity originated with a governmental agency, (ii) whether the entity is substantially funded by, or its primary source of funds is, a government agency, (iii) whether a principal purpose for which the entity is formed is to provide services or undertake obligations that agencies are legally authorized to perform and have traditionally performed, and (iv) whether the entity is treated as a public entity by other statutory provisions.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VL:jgl