

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance/Administration . . . Executive/Legal . . . Enforcement/Conflict of Interest
(916) 322-5660 322-5901 322-6441

May 13, 1976

J. David Fitzsimons
Assistant City Attorney
801 Eleventh Street
P O Box 642
Modesto CA 95353

~~DP~~
76-244

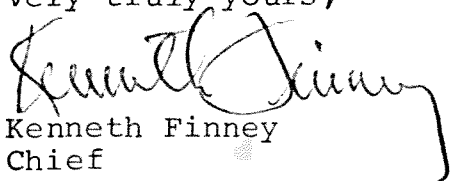
Dear Mr. Fitzsimons:

This letter is in response to your letter of April 29, 1976, and will serve to confirm our telephone conversation of May 11, 1976. In that conversation I indicated to you that it is the opinion of the staff that the school district is not a city agency for purposes of Gov. Code §91001(b) or for purposes of Gov. Code §82011. Accordingly, the city attorney is not the civil prosecutor with respect to the school district, nor is the city council the code reviewing body for the school district. To the contrary, the district attorney is the civil prosecutor and the board of supervisors is the code reviewing body.

You also asked whether Gov. Code §91003 provides the exclusive remedy for violations of Gov. Code §87100. I informed you that it is the exclusive remedy under the Act but that the Commission has determined that the term "person" includes local government agencies. See opinion requested by John Witt, 1 FPCC Ops. 1 (75-044, Feb. 21, 1975). Although the opinion concerned the lobbying provisions of the Act, arguably it also would apply to Gov. Code §91003(a) and authorizes the city attorney to sue in his capacity as a person residing in the jurisdiction.

Finally, we discussed the conflict of interest to which your letter refers, and I informed you that it would be inappropriate to comment without further facts. If you have any further questions, please do not hesitate to contact me.

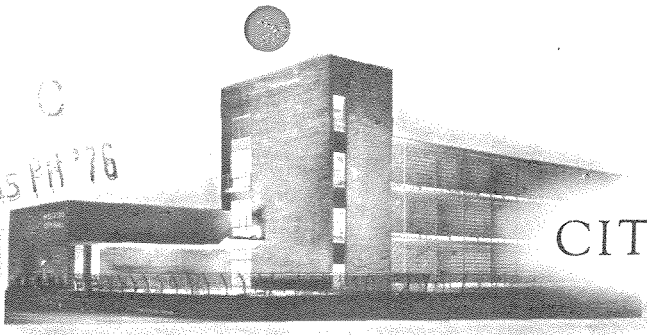
Very truly yours,


Kenneth Finney
Chief
Legal Division

KF:pvp

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CITY OF MODESTO
CALIFORNIA

OFFICE OF CITY ATTORNEY

City Hall, 801 Eleventh
P. O. Box 642, 95353
(209) 524-4011

April 29, 1976

Mr. Ken Finney
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Request for Opinion as to City Attorney Acting as
Civil Prosecutor for City School District.

Dear Mr. Finney:

I am attaching a copy of the letter which the City Attorney received from Harvey Sohnen, Attorney, on behalf of a citizen's group which has claimed a conflict of interest in the method used to fill a school board vacancy. A similar request was sent to the Stanislaus County Counsel's office.

Although the school districts are created by City Charter, it is my initial conclusion that the school district is not a city agency. In addition, the City Attorney does not have jurisdiction to civilly prosecute a violation of Article 1, Chapter 7, as to conflicts of interest. The pertinent factors leading to these conclusions are:

1. The City of Modesto does not have jurisdiction or control over the decisions of the Modesto City Schools or its facilities or employees. This is evident from the Charter, statutes, and court decisions.

2. Citations include the following:

30 Ops AG 347 (1957)

Lansing v. Board of Education (1935)
7 Cal. App. 2d 211

Mitchell v. Hartman (1931)
112 Cal. App. 370

Esberg v. Badaracco (1927)
202 Cal. 110

3. The Modesto City Charter, Section 1500 (a copy is attached) provides for an elementary school district and a high school district

Mr. Ken Finney
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governed by the same Board of Education. Neither district has boundaries which are coterminous with the Modesto City limits nor with each other. Each district includes unincorporated territory in the County of Stanislaus.

When I discussed this with you on April 27, 1976, I pointed out the two primary issues:

First, is the school board a city agency as specified in Section 91001 (b) of the Political Reform Act of 1974? Section 82041 appears to define a school district on the same level as a city. This issue also raises the question of whether a city is the code reviewing body for a school district as defined in Section 82011.

Second, regardless of the above, is enforcement of Article 1 of Chapter 7, Sections 87100 to 87103, limited to a private civil action? It is obvious that criminal remedies of Section 91000 are excluded by Section 87102. However, Section 91001 (b) is also excluded, and it is that section which provides that a City Attorney can act as a civil prosecutor under Section 91003.

I would appreciate a staff opinion from you and if you have any reaction as to the alleged conflict of interest, I would also appreciate receiving it.

Respectfully,


J. DAVID FITZSIMONS
Assistant City Attorney

JDF:rh
Attachments

LAW OFFICES OF
STANISLAUS COUNTY LEGAL ASSISTANCE, INC.

925 J STREET • P.O. BOX 3291
MODESTO, CALIFORNIA 95353

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ADMINISTRATIVE ASSISTANT

April 20, 1976



TELEPHONE
(209) 524-6212

City Attorney of Modesto
Elwyn Johnson, Esq.
801 11th Street
Modesto, California 95354

Dear Mr. Johnson:

Enclosed please find a copy of the Public Statement of Concerned Citizens for a Better School Board. We request that you investigate Mr. Rose's appointment for possible violations of the Political Reform Act of 1974.

We request that you notify us as to your intentions regarding this matter prior to the next School Board meeting on May 3, 1976. Your prompt investigation and report is appreciated, as it is a prerequisite to any possible private action.

We will be pleased to answer any questions you might have. Please address any inquiries to the undersigned as legal advisor for this group.

Sincerely,

STANISLAUS COUNTY LEGAL ASSISTANCE, INC.

Harvey Sohnen
Attorney at law

HS:dsm
Enclosure

PUBLIC STATEMENT OF CONCERNED CITIZENS

FOR A BETTER SCHOOL BOARD

The Concerned Citizens for a Better School Board is a community based group concerned about the ability of members of the Modesto Board of Education to make impartial and disinterested decisions in the community interest.

Our concerns arise from Mr. Robert C. Bienvenu's March 10, 1976 nomination of E. W. Rose to fill a vacancy on the five person board left by Judge Donald Cantwell's resignation. Mr. Bienvenu had represented Mr. Rose in a recount after Rose's defeat in an election for the board in March, 1975.

This concern further arises from the fact that immediately prior to this nomination, another candidate, Mr. John Uhl had received a 2-1 vote with one abstention for the same vacancy. The fourth voting member abstained on the grounds of a personal and business relationship with Mr. Uhl. Mr. Bienvenu nominated Mr. Rose and cast the deciding vote without disclosing his relationship with Mr. Rose.

The Political Reform Act of 1974, passed by California voters by ballot initiative, requires public officials to refrain from using their offices to influence decisions in which they have a financial interest. This law is binding on school board members.

School board members may not participate in decisions which have a reasonably foreseeable material financial effect on their law practice or other business or any source of income above \$250 within twelve months prior to the decision. Direct or indirect financial dealings between Mr. Rose and Mr. Bienvenu must be disclosed so that the public may know whether the law is being complied with.

Mr. Bienvenu is morally obliged to conduct himself as an officer of the Modesto Board of Education in such a way as to avoid even the appearance of impropriety. He has failed to do that by acting as Mr. Rose's attorney in a recount and then nominating him for a vacancy to the same board less than one year later. This is put in further focus by the fact that Mr. Uhl's application was defeated because a board member abstained on the grounds of her association with Mr. Uhl. The conduct of other members put Mr. Bienvenu on notice to disclose his relationship with Mr. Rose, but he failed to do so.

Public Officials must disclose their financial interests. We demand that Mr. Bienvenu disclose fully all financial interest, financial benefits or business contacts between himself and Mr. Rose, or between members of their families or businesses in which they or their families have an interest, over the last five years.

Mr. Bienvenu has created a suspicion that he is not dealing at arms length with members of the Board of Education and Modesto City School administrators. We demand that he fully disclose contacts and benefits with other board members and supervisory administrators to the same extent as with Mr. Rose.

A copy of this statement is being sent to the Modesto City Attorney, to initiate an investigation into violations of the Political Reform Act of 1974.

April 20, 1976

CONTACT: Reverend Monroe Taylor, King-Kennedy Memorial Center, 601 South Franklin, Modesto; Luis Valdez, El Concilio for the Spanish Speaking,
cc: City Attorney of Modesto 126 H St, Modesto
Robert C. Bienvenu, Esq.
E. W. Rose
Harriette Kirschen
Evelyn G. Burris
Richard G. Patterson
County Counsel of Stanislaus County