

# State of California



## Fair Political Practices Commission

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

November 29, 1976

Mr. Thomas Byrne, Member  
Stanislaus County Board of  
Education  
205 Mensinger  
Modesto, California 95350

A-76-267

Dear Mr. Byrne:

Your letter of November 19 to Mr. Daniel Lowenstein has been referred to me for reply.

You ask three questions; first: Must County Boards of Education be included under those agencies required to file a Conflict of Interest Code under the Act?

The answer: Yes. Every agency of state and local government is required to adopt a Conflict of Interest Code. Government Code §82041 defines "local government agency" to include school districts.

Second, Must a County Board of Education adopt a Conflict of Interest Code which includes the elected County Superintendent in its enumeration of the positions within the agency as set forth in §87302(a) of the Act?

Generally, the answer appears to be yes. As the principal administrative officer of a school district, a County Superintendent is responsible to the County Board of Education. As the principal legislative body of the District, the county board of education has the responsibility of adopting a Conflict of Interest Code pursuant to the Political Reform Act (covering designated positions of the District). It would seem an entirely idle act to exclude the County Superintendent from inclusion within the Code of the District, when such Code must include within it certain employees who are answerable to the Superintendent as well as to the Board.

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Third, can the County Superintendent of Schools and the County Board of Education deem themselves to be separate agencies and thereby adopt separate Conflict of Interest Codes enumerating different positions within their separate agencies?

As indicated above in answer to Question #2, I cannot foresee the circumstances under which a County Superintendent of Schools would not be included within the Conflict of Interest Code of the District, which must be developed and adopted by the County Board of Education. However, the County Counsel of Stanislaus County has indicated, as in your letter, that the County Superintendent and the County Board may adopt separate Conflict of Interest Codes and a joint Code is not mandatory. As indicated in Mr. Walter's letter, Government Code §87301 provides that any question of the level of the department which shall be deemed an agency for purposes of §87300 shall be resolved by the code reviewing body. This simply means that the code reviewing body for the District, namely, the County Board of Supervisors, must make the determination of whether there shall be one or two Codes. In making this determination, the Board of Supervisors must be cognizant of the problems inherent in separation of the Office of the County Superintendent from the Code for the Board of Education and the District. Such problems include the potential for having someone act in violation of the disqualification provision of the Superintendent's Code and yet having the full effect of the decision being borne by the ultimate decision-maker, the Board of Education, in terms of injunctive action against the decision of the Board. See, Government Code §91003.

I trust my answers to your questions have been responsive. If you have any further questions, please call me at 916/322-6444.

Sincerely,

Delbert L. Spurlock, Jr., Chief  
Conflicts of Interest Division

DLS:glb

cc: Jim Talley, C.S.B.A.  
John Christensen, Deputy  
Stanislaus County Counsel  
Norman Glick, Chairman  
Stanislaus County Board of  
Education

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November 19, 1976

Mr. Dan Lowenstein, Chairman  
California Fair Political  
Practices Commission  
1100 Kay Street  
Sacramento, California 95814

Dear Mr. Lowenstein:

In an attempt to develop a Conflict of Interest Code for the Stanislaus County Board of Education, a concern has developed.

This concern involves Article Three of the Political Reform Act of 1974 - Section 87300, "Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article".

Specifically, I would like your opinion regarding the following questions:

1. Must county board's of education be included under those agencies required to file a Conflict of Interest Code under the Act?
2. Must a county board of education adopt a Conflict of Interest Code which includes the elected County Superintendent in its enumeration of the position within the agency as set forth in Section 87302 (a) of the Act?
3. Can the county superintendent of schools and the county board of education deem themselves to be separate agencies and thereby adopt separate Conflict of Interest Codes enumerating different positions within their separate agencies?

Two differing opinions have developed thus far, an opinion provided by counsel to California School Boards Association Biddle and Walters Sacramento and by the Stanislaus County Counsels office. I have enclosed a copy of Biddle and Walters opinion. Since a written opinion is not available from Stanislaus County Counsel's office, I would approximate their opinion - essentially that "County Superintendent and County Board may adopt separate Conflict of Interest Codes and a joint Code is not mandatory".

Given the historical relationship between the elected County Superintendent of Schools and the elected County Board of Education in California, I feel it is important that we ascribe to the very intent of the law and therefore ask your opinion on this matter.

Your response to this request at the earliest possible date will be appreciated.

Sincerely yours,

*Thomas M. Byrne*

Thomas M. Byrne, Member  
Stanislaus County Board of Education  
205 Mensinger  
Modesto, Calif. 95350

cc: Del Spurlock, Chief  
Conflict of Interest Division, FPPC  
Jim Talley, C.S.B.A.  
John Christensen, Deputy  
Stanislaus County Counsel  
Norman Glick, Chairman  
Stanislaus County Board  
of Education

Jim

**BIDDLE AND WALTERS**

ATTORNEYS AT LAW

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November 4, 1976

W. CRAIG BIDDLE  
ROBERT G. WALTERS  
—  
JOHN L. BUKEY

TELEPHONE  
(916) 441-3237

Mr. James C. Talley  
California School Boards Association  
800 Ninth Street, Suite 201  
Sacramento, CA 95814

RE: YOUR LETTER OF OCTOBER 18, 1976 - Conflict of Interest, County Schools

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Dear Jim:

In your letter of October 18, 1976, you posed several questions regarding the promulgation of conflict of interest codes, pursuant to the provisions of the Political Reform Act of 1974. You were specifically concerned in these questions with potential problems which might arise in county educational agencies, which have both publicly elected superintendents and boards of education. Following are my answers to your questions:

1. Can a county board of education adopt and promulgate a Conflict Code which includes the elected county superintendent in the enumerated list of positions within the county educational agency under the Act?

ANSWER - Yes. Section 82019 of the Government Code (part of the Political Reform Act of 1974) states as follows:

"Designated employee" means any officer, employee, member or consultant of any agency whose position with the agency (b) is elective, other than an elective state officer."

There are, of course, other designations under §82019, but I believe you can see that subsection (b) is sufficient to answer the question posed in your letter.

2. Can an elected county superintendent deem his office the "agency" and thereby adopt and promulgate a Conflict of Interest Code which includes the members of the county board of education in enumerated positions?

ANSWER - No. Please refer to the definition of "agency" in §82003 of the Government Code as added in the Political Reform Act. In that section, an "agency" means any state agency or local government agency. Clearly, in my opinion, the intent of the Act is to speak to the general term "agency", meaning a unit of government, and not an official of government, regardless of how that official achieves the position or how the position may be designated from time to time. Also, one should refer to the common usage of the county

schools office and its common designation in general terminology. Doing this, one would see that the term "agency" refers to much more than just an elected county superintendent of schools. I believe any reference to the Education Code would also show that it is replete with references to the county schools office as an agency of government or in the context of an agency of government and not with relationship to one elected official.

Finally, although a county superintendent may be elected, he serves to carry out the policies established by the elected county board, and the nature of his duties as set forth in the Education Code clearly indicates that he is an administrator serving pursuant to policies established by a legislative body.

I would also ask you to see §82041 of the Government Code (added by the Political Reform Act) which defines a "local government agency" as meaning a county, city or district of any kind, including school district.... (emphasis added)

3. Can the county superintendent of schools and the county board of education deem themselves to be separate agencies and thereby adopt separate Conflict of Interest Codes enumerating different positions within their separate agencies?

ANSWER - No. The reasons given in response to question No. 2 would apply to this question as well and would serve to support the answer stated here.

Finally, I would call your attention to Government Code §87301 (added by the Political Reform Act), particularly the last sentence which states as follows:

"Any question of the level of a department which should be deemed an 'agency' for purposes of §87300 shall be resolved by the code reviewing body."

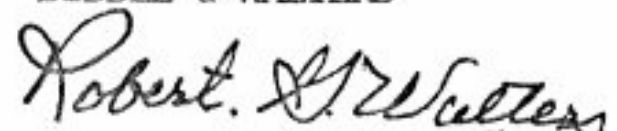
This means, to me, that the appropriate body to resolve conflicts of the sort posed by your letter at any county office should be resolved by either the County Board of Supervisors, if the county board office is serving in only one county, or by the Fair Political Practices Commission if the county office of education serves more than one county.

I am confident that the answers I have given you above are correct, but should there be some dispute in actuality, then the appropriate body to resolve that dispute over the term "agency" is the code reviewing body for the particular county schools office.

I trust these answers will be helpful to you.

Sincerely,

BIDDLE & WALTERS



Robert G. Walters