



California Fair Political Practices Commission

April 16, 1986

Janice Garfinkle, Vice President
Board of Education
San Juan Unified School District
P.O. Box 477
Carmichael, CA 95609-0477

Re: Your Request for Advice
Our File No. A-86-096

Dear Ms. Garfinkle:

This is in response to your letter, dated March 17, 1986, requesting formal written advice, as a member of the governing board of the San Juan Unified School District, concerning your duties under the Political Reform Act.^{1/} You and the School District's legal counsel have stated the material facts as follows.

FACTS

You are a member of the governing board of the San Juan Unified School District ("School District"). Recently you have become a salaried employee of Kids-on-Kampus, a non-profit corporation providing supporting programs for students in school districts in Sacramento County. Specifically, you are working as a part-time office manager/project coordinator for a project called "Safety Pals" which is sponsored by Kids-on-Kampus. No part of your salary from Kids-on-Kampus is derived from the School District's funds. Further, there is no contractual agreement between the School District and either Kids-on-Kampus or the project called "Safety Pals."

QUESTION

You wish to know whether your employment at Kids-on-Kampus creates a conflict of interest under the Political Reform Act

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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with respect to your position as a member of the School District's governing board?

CONCLUSION

A conflict of interest, requiring your disqualification from participating in or attempting to influence a School District decision, would exist if:

- (1) The decision's effect on Kids-on-Kampus would be "significant;" or
- (2) There is a "nexus" between the decision and your duties at Kids-on-Kampus; or
- (3) Kids-on-Kampus "appears before" the governing board of the School District.

ANALYSIS

The Political Reform Act prohibits public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which the public official has a financial interest. Section 87100.

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
- (c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided

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to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e)

Kids-on-Kampus is a "source of income" to you within the meaning of Section 87103(c) if you receive more than \$250 annually in compensation from Kids-on-Kampus. Assuming that Kids-on-Kampus is a source of income to you, you must not make, participate in, or attempt to use your official position to influence, any governmental decision that could have a reasonably foreseeable material financial effect on Kids-on-Kampus.

The Commission, by regulation, 2 Cal. Adm. Code Section 18702 (copy enclosed), has defined several ways in which a decision can have a material financial effect on a source of income. A decision is considered to have a "material" effect on a nonprofit organization if the decision's effect will be "significant." (2 Cal. Adm. Code Section 18702(b)(3)(D).) A determination as to whether an effect is "significant" can be made only in the context of a specific situation, after considering all the facts. For example, a decision whether to make a grant to a nonprofit corporation is likely to be the type of decision which would have a significant effect on the nonprofit corporation.

In addition, under 2 Cal. Adm. Code Section 18702(b)(3)(B), a decision has a material financial effect on an official's source of income when "there is a nexus between a governmental decision and the purpose for which the official receives income..." This regulation prevents you, as a governing board member, from using your official position to accomplish what you are paid to do as an employee of Kids-on-Kampus. For example, if your responsibilities for Kids-on-Kampus included

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convincing school districts to participate in the "Safety Pals" program, you would be required to disqualify yourself from the School District's decision to participate in the "Safety Pals" program.

Finally, you are required to disqualify yourself from participating in School District decisions when Kids-on-Kampus "appears before" the Board of Education. 2 Cal. Adm. Code Section 18702.1(a)(1) (copy enclosed). Kids-on-Kampus is considered to be appearing before the School Board when it either:

- (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;
- (2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

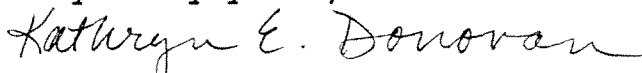
2 Cal. Adm. Code Section
18702.1(b)

In the event you are required to disqualify yourself from participating in a School District decision, you must also refrain from attempting to influence that decision. Accordingly, you would be prohibited from representing Kids-on-Kampus before the School District, or communicating with officials or employees of the School District, with respect to that decision. However, you may communicate with the general public or the press concerning the decision. 2 Cal. Adm. Code Section 18700.1 (copy enclosed).

This advice is confined to the provisions of the Political Reform Act. As your letter indicates, you are aware that there are other conflict of interest laws that may be implicated (i.e., Sections 1090 et seq. and Sections 1125 et seq.), and you have sought advice with respect to those laws.

If you have any further questions regarding the Political Reform Act, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:JG:sm

SAN JUAN UNIFIED SCHOOL DISTRICT

in Suburban Sacramento

BOARD OF EDUCATION

Barbara A. Farley
Jan Garfinkle
Bruce M. Mangerich
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3738 WALNUT AVENUE • CARMICHAEL, CALIFORNIA 95608 - 3099 • Telephone 971-7111

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Please address all correspondence to:
P. O. BOX 477, CARMICHAEL, CALIFORNIA 95609 - 0477

March 17, 1986

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

Dear Sirs:

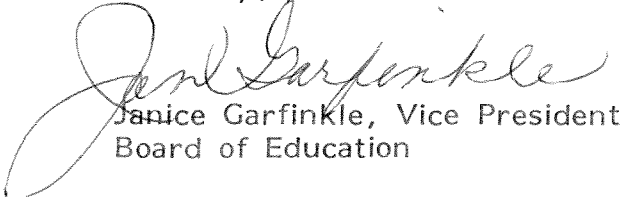
I am a member of the San Juan Unified School District Board of Education and, in addition, recently became a salaried employee of Kids-on-Kampus, a non-profit corporation providing supporting programs for students in school districts in Sacramento County. I asked for and received a legal opinion from the school district's legal counsel re any conflict of interest implications of my status as an employee of Kids-on-Kampus.

The attached opinion from the school district's legal counsel advises that I should request further clarification from the Fair Political Practices Commission in accordance with §83114 of the California Government Code on this matter.

Please provide me with a written staff advice letter based on the facts stated in the attached letter from Kronick, Moskovitz, Tiedemann and Girard. Pending receipt of your advice letter, I shall continue to comply with the recommendations supplied by the above legal firm on page 7 of its letter.

If you need any additional information, please call me at 485-2420.

Sincerely,



Janice Garfinkle, Vice President
Board of Education

JG:jat

Enclosure

cc: Michael J. Keebler, Legal Counsel
Fred J. Stewart, Superintendent of Schools

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

770 L STREET, SUITE 1200

SACRAMENTO, CALIFORNIA 95814-3363

TELEPHONE (916) 444-8920

ROBERT S. SHELBURNE

February 20, 1986

Dr. Fred J. Stewart
Superintendent
San Juan Unified School District
3738 Walnut Avenue
PO Box 477
Carmichael, CA 95608

Dear Dr. Stewart:

At your authorization, we have reviewed the conflict of interest implications of Trustee Jan Garfinkle's status as a recently employed salaried employee of Kids-on-Kampus, a non-profit corporation providing supportive programs for students in school districts in Sacramento County.

As we understand it, the facts are as follows: Trustee Garfinkle works in an administrative position (part-time office manager/project coordinator) in a project called "Safety Pals" sponsored by Kids-on-Kampus; she does not work in schools under the overall supervision of a district site administrator. The funds which support her salary come from PTA and other parent group-controlled funds, from grants made by private corporations unrelated to school districts, and possibly from some school improvement funds. No part of her salary is derived from San Juan Unified School District funds. There is no contractual agreement between San Juan Unified School District and either Kids-on-Kampus or the project called "Safety Pals".

You will recall our earlier client memo in which we pointed out that effective January 1, 1986, the Education Code provisions regulating conflicts of interests have been repealed, and another set of laws has now been made controlling. Those "new" laws are found in Government Code Sections 1090-1097, 1125-1128, and 81000-91015.* We will review their relevance and application here.

*Unless otherwise indicated, all section references are to the California Government Code.

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Section 1090 provides in pertinent part that school board members "shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." The "making" of a contract under this law is construed liberally to include the promoting and planning for the arrangement, not just voting to approve the contract. Our information indicates that the San Juan Unified School District's Board of Trustees does not have a contract with Kids-on-Kampus or Safety Pals and that none is contemplated. Under these circumstances, and in the absence of any evidence indicating that Trustee Garfinkle has worked to have San Juan School District enter into an arrangement whereby district funds are made available to Kids-on-Kampus, it is our opinion that no conflict of interest under Section 1090 exists at this time.

As mentioned above, however, conflict of interest statutes are liberally construed to effect their purpose and strongly and strictly enforced by the courts. As an example, a recent court decision held that mere membership on a board or council establishes a presumption that the person participated in a transaction forbidden by these conflict of interest statutes. There are also criminal penalties for violation of these laws. Therefore, the district and its trustees must be aware of those interests which could be construed as financial interests of board members and avoid contractual arrangements which would run afoul of the law.

If a contract were contemplated between the district and Ms. Garfinkle's employer, would there be a prohibited conflict making the contract void? Generally speaking, a trustee being a salaried employee of a contracting party would come within the ambit of being "financially interested." Miller v. City of Martinez (1938) 28 C.A.2d 364. However, there are some carefully defined interests which, though financial, are allowed so long as the interested board member complies with certain conditions set forth in Section 1091. These conditionally allowed interests are called "remote interests" and one of them, defined in Section 1091(b)(1), appears to be applicable to Ms. Garfinkle. It provides that the interest as an "employee of a non-profit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5" is a remote interest and therefore conditionally allowable. [As Ms. Garfinkle is a salaried employee of the non-profit corporation, the exception in Section 1091.5(a)(8) is inapplicable.]

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Note the conditions which also must be satisfied: If a contract were contemplated between the district and Kids-on-Kampus or Safety Pals, the trustee employed by this non-profit corporation would have to completely avoid influencing or attempting to influence any other trustee to enter into the agreement. See Section 1091(c). In addition, the trustee would also be required to (1) disclose the facts of the financial interest to the full board of trustees in public session, and (2) make sure the factual disclosure is noted in the public session minutes of the board meeting. Thereafter, the board of trustees could authorize, approve, or ratify the contract with the non-profit corporation so long as it did so "in good faith" and "by a vote of its membership sufficient for the purpose without counting the vote or votes of the (trustee) with the remote interest." See Section 1091(a).

Turning to Sections 1125-1128, we should first point out that recent amendments to the law clarify one thing: the prohibitions contained in Section 1126 do apply to elected school trustees. [Education Code Section 35233 as amended expressly states that these prohibitions are applicable to school board members.] Therefore, the recent opinion of the California Attorney General (64 Ops.Cal.Atty. Gen. at 800) stating that Section 1126 is not applicable to members of an elective governing body is not to be followed.

It is difficult to analyze the proscriptions contained in Section 1126 in the context of school district operations because the governing board is the appointing power in school districts, not a non-elective official. Section 1126 provides:

§1126. (a) Except as provided in Section 1128, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. Such officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use of private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course of hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves such time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

The local agency may adopt rules governing the application of this item. Such rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee.

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The facts indicate that the board of trustees does not become involved contractually with Kids-on-Kampus or its projects. Therefore, to that extent (taking contractual action), Ms. Garfinkle's compensated employment would not appear to run afoul of the flat prohibitions contained in subdivision (a) of Section 1126. On the other hand, Ms. Garfinkle's employment duties may have some direct or indirect connection with the non-profit corporation's activities as they relate to San Juan Unified School District. It may also be that at least some portion of her salary is derived from funds over which the San Juan school board has at least a potential oversight responsibility. To insulate Ms. Garfinkle from a charge that in these respects her salaried "employment, activity, or enterprise" is "inconsistent, incompatible, in conflict with or inimical to...her duties as a local agency officer" we advise that she should arrange her employment responsibilities so that she has no responsibility for the corporation's (or project's) activities on San Juan Unified School District sites. We also advise that her compensation should not derive from any funds over which the San Juan School Board has direct or indirect control or oversight responsibility. In providing this advice, we are mindful of the courts' frequent statements that the purpose of these laws is not only to avoid actual conflicts or self-dealing but also even the appearance of them.

With regard to the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) the operative prohibitions are contained in Section 87100 as follows:

No 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.

Section 87103 defines "financial interest" for purposes of Section 87100 as follows:

§87103. Financial interest in decision by official.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its

effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

[There are also detailed regulations in Title 2 of the California Administrative Code implementing these code sections and other Political Reform Act provisions.]

Since the Political Reform Act specifically provides that any person may request the Fair Political Practices Commission to issue an opinion regarding his/her duties under the Political Reform Act and also gives specific protections against criminal and civil penalties to a person who acts in good faith on a Commission opinion, we recommend that the school district or Trustee Garfinkle call and then request in writing from the Commission a written opinion on trustee Garfinkle's responsibilities under the Act. The Commission's responsibilities in this respect are as follows:

§83114. Request for opinions or written advice; issuance; effect; public records; publication

(a) Any person may request the commission to issue an opinion with respect to his duties under this title. The commission shall, within 14 days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published.

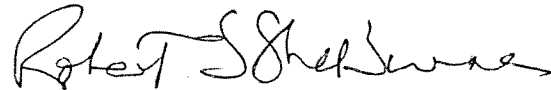
(b) Any person may request the commission to provide written advice with respect to the person's duties under this title. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all of the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request or such later extended time.

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Pending receipt of the Commission's opinion, we would advise trustee Garfinkle not only to insulate herself in her private employment from any duties pertaining to San Juan schools (as advised above pertaining to Section 1126), but also as a trustee, to disqualify herself from voting, discussing, planning, or in any way influencing or attempting to influence any San Juan School District board, district office, or site level decision pertaining to programs of Kids-on-Kampus, Safety Pals, or their funding.

I trust this opinion addresses the issues adequately. Please call if you have any questions.

Very truly yours,



ROBERT S. SHELBURNE

RSS:klh

cc: Trustee Jan Garfinkle
Arlene Inglis, Assistant Superintendent



California Fair Political Practices Commission

March 21, 1986

Janice Garfinkle, Vice President
Board of Education
San Juan Unified School District
3738 Walnut Avenue
Carmichael, CA 95608-3099

Re: A-86-096

Dear Ms. Garfinkle:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh