



## FAIR POLITICAL PRACTICES COMMISSION

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October 26, 1998

John F. Walsh  
Best Best & Krieger LLP  
3750 University Avenue  
Post Office Box 1028  
Riverside, California 92502-1028

**Re: Your Request for Advice  
Our File No. A-98-234**

Dear Mr. Walsh:

This letter is in response to your request for advice on behalf of the San Luis Coastal Unified School District (the "District") regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Are the board members of a publicly-funded charter school subject to the conflict-of-interest provisions of the Political Reform Act?
2. If the board members are subject to the Act's conflict provisions, may a board member who owns property immediately adjacent to the charter school participate in decisions regarding improvements to the charter school's physical facilities or enlargements to the charter school's curriculum?

### CONCLUSION

1. Charter schools organized pursuant to Education Code section 47600 et seq. are government agencies. Therefore, the charter school's board members must comply with the conflict-of-interest provisions of the Act.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

2. You have not provided enough facts to enable us to answer whether a board member who owns property immediately adjacent to the charter school may participate in certain decisions. This letter will provide the general rules to assist you in analyzing this question.

### FACTS

On or about March 16 and 17, 1998, the district entered into an amended agreement (the "charter agreement")<sup>2</sup> with Bellevue-Santa Fe Charter School (the "charter school"), a non-profit corporation, pursuant to the requirements of Education Code Section 47600 et seq.

Pursuant to Education Code Section 47600 et seq., charter schools hold a certain operational independence from the school districts that approve their charters. In particular, Education Code Section 47601 provides, in relevant part, "[i]t is the intent of the Legislature ... to establish and maintain [charter] schools that operate independently from the existing school district structure ...."

Article X of the charter agreement provides, in relevant part, as follows:

"[t]he Charter School shall comply with all applicable state and federal laws. The Charter School understands that, as an entity supported by public funds, the Charter school is subject to laws governing public agencies including, but not limited to, the Public Records Act [Citation] ... and the Ralph M. Brown Act."

The Board of Directors (the "board") of the charter school may from time to time make general improvements to the charter school's physical facilities. In addition, the board has considered enlarging the curriculum of the charter school. These improvements could have a foreseeable material financial effect upon the values of those properties adjacent to the charter school. Much of the area immediately surrounding the charter school has been zoned for residential use.

A member of the board owns property immediately adjacent to the charter school. He may develop this property for real estate purposes. Should the board go forward with its plans to make improvements to the charter school's physical facilities and/or to enlarge the charter school's curriculum, it is foreseeable that the board member's property would materially appreciate in value, but the extent of such appreciation is not known.

The board is also considering entering into various construction and accounting services agreements with local individuals, firms and/or vendors, the value of which agreements is not

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<sup>2</sup> A copy of the charter agreement was provided by you and is incorporated by reference.

known. These services agreements might be entered into with individuals, firms or vendors that may hold a familial, or other close connection, with board members.

You have asked whether the conflict-of-interest provisions of the Act apply to the individual board members. You have also asked whether this conclusion would be the same if the board omitted Article X of its Charter Agreement. Lastly, in the event the conflict provisions apply, you have also asked for a response to two general questions regarding the conflict of interest rules.

### ANALYSIS

A “public official” means “every member, officer, employee or consultant of a state or local government agency ....” (Section 82048.) Public officials are subject to the conflict provisions of the Act. (Section 87100.) 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). Therefore, to determine whether the board members must comply with the requirements of the Act, we must determine whether the charter school, a nonprofit organization, is a local government agency.

To make this determination, the Commission has stated that “in analyzing this question we believe several criteria should be considered, and that the true nature of the entity, not merely its stated purpose, should be analyzed in determining whether the entity is public or private within the meaning of the Act.” (*In re Siegel* (1977) 3 FPPC Ops. 62.)

The criteria used in *Siegel* include:

- (1) Whether the impetus for formation of the corporation originated with a government agency;
- (2) Whether the corporation is substantially funded by, or its primary source of funds is, a government agency;
- (3) Whether one of the principal purposes for which the corporation is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and
- (4) Whether the corporation is treated as a public entity by other statutory provisions.

An examination of each of these factors in this case leads us to the conclusion that all charter schools formed pursuant to Education Code section 47600 et seq. are public entities. As such, the charter school referenced by you, like all charter schools, must be considered a “local government agency” within the meaning of the Act.

First, we find it significant that charter schools are organized under the authority and pursuant to the procedures of the California Education Code sections 47600 et seq. Education Code section 47601 states that the Charter Schools Act is intended “to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure” in order to accomplish certain goals that are set forth in that same section. In essence, it is the State Legislature itself that is the impetus and authority for formation of charter schools in California. Accordingly, we find that the first criteria is met.

Second, the Charter Schools Act provides that the Superintendent of Public Instruction shall make specific enumerated apportionments from the State School Fund to those schools organized under the Charter Schools Act. (Education Code section 47612.) Furthermore, charter schools may participate in the State Teacher’s Retirement System. (Education Code section 47611.) In addition, the California Legislature enacted Education Code section 41365 in 1996 to provide for the Charter School Revolving Loan Fund. School districts may borrow money from this fund, with the approval of the Superintendent of Public Instruction, for use by its charter schools for start-up costs. We cannot determine from these statutory provisions whether the “primary” source of funds for charter schools comes from a government agency. However, we find them sufficient to conclude that charter schools organized under the Charter Schools Act are “substantially funded” by the State of California. Therefore, we conclude that the second criteria is met for all charter schools organized under the Charter Schools Act.

In addition, the facts provided by you further support the notion that the particular charter school referenced by you is substantially funded by the state. The Agreement between the charter school and the school district specifically provides that the charter school is a component of the district for purposes of state funding. (Agreement, Section IV.) Section IV of the agreement further provides that the charter school will be funded by the state in the same manner as the district pursuant to Title 5 of the California Code of Regulations. Section VI of the agreement provides that the district will lease the physical school site to the charter school at the cost of \$1 per year. Section VII of the agreement obligates the district to assist the charter school in obtaining access to various services at costs available to the district. Again, we conclude that the second criteria is met.

We next to turn to the third criteria. Education Code section 47601 states that charter schools are formed to accomplish all of the following:

- “ (a) Improve pupil learning.
- (b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.

- (c) Encourage the use of different an innovative teaching methods.
- (d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.”

These functions are traditionally performed by the public school system. The authority of the charter schools to take over these functions is closely monitored and regulated by the state. The following are a few examples. First, only a certain number of charter schools may operate within the state and only a certain number may operate within any particular district during any single school year. (Education Code section 47602.) Charter schools must meet the statewide performance standards and conduct the pupil assessments required pursuant to Education Code Section 60602.5 (Education Code section 47605(c).) A charter can be revoked by the school district or county board of education that granted the charter. (Section 47607.) The State Department of Education reviews the educational effectiveness of the charter school approach. (Education Code section 47616.)

We conclude the third criteria is overwhelmingly met by all charter schools organized pursuant to the Charter Schools Act because the principal purposes for which such schools are formed is to provide public education, a service public agencies traditionally have performed.

Lastly, a charter school is deemed to be a “school district” for purposes of applying certain sections of the California Constitution. (Education Code section 47612(c).) Charter Schools must meet statewide performance standards and conduct pupil assessments pursuant to the provisions of the Education Code. (Education Code section 47605(c).) These two sections are sufficient to conclude that all charter schools are treated as public entities by other statutory provisions, and therefore should appropriately be subject to the Act. This criteria is even more significant under your facts given that the charter agreement provides the following in Article X:

“[t]he Charter School shall comply with all applicable state and federal laws. The Charter School understands that, as an entity supported by public funds, the Charter school is subject to laws governing public agencies including, but not limited to, the Public Records Act [Citation]...and the Ralph M. Brown Act.”

Therefore, the fourth criteria is met.

We conclude that all charter schools organized pursuant to Education Code section 47600 et seq. meet the criteria set forth in *Siegel*, and are therefore government agencies. Board members of these schools must comply with the requirements of the Act. Amending the charter agreement to delete Section X, quoted above, would not change this outcome because such language in a charter agreement is not necessary to conclude that the charter school operating under its provisions is a government agency.

You have also asked whether a board member who owns property immediately adjacent to the charter school may participate in decisions regarding the school. You have not provided enough information to answer this question. However, the following overview should assist you in your analysis.

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. (Section 82048.) 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 the effect on the public generally, on the official or a member of his or her immediate family, or on any one of five enumerated interests including any real property in which the public official has an interest worth \$1,000 or more. (Section 87103(b).)

The public official must evaluate whether it is reasonably foreseeable that a governmental decision will have a material financial effect on any of his or her economic interests. There are three steps to making this evaluation.<sup>3</sup> First the official must determine whether the economic interest is directly or indirectly involved in the decision. (Regulations 18700(b)(4), Regulation 18704 et seq.) Based upon the degree of involvement, the public official must then choose the right standard for evaluating whether the financial impact from the decision on the economic interest will be material. Regulation 18705.2 sets forth the standard when the economic interest is real property.

Once the applicable materiality standard is identified, the public official can frame the critical question: is it substantially likely that the materiality standard will be satisfied as to the economic interest as a result of the decision? (See Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) If the answer is yes, then the public official will have a conflict of interest unless the "public generally exception" applies. If the answer is no, then the public official will not have a conflict of interest. We stress that this is a case-by-case determination.

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<sup>3</sup> On October 1, 1998, the Commission renumbered and made technical changes to its regulations interpreting the conflict-of-interest provisions of the Act. I have enclosed information describing those changes.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink that reads "Allison". The signature is written in a cursive style with a large, sweeping initial "A" that extends to the left.

By: Deborah Allison  
Staff Counsel, Legal Division

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