



FAIR POLITICAL PRACTICES COMMISSION

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September 26, 2002

Val R. Fadely
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**Re: Your Request for Advice
Our File No. A-02-223**

Dear Mr. Fadely:

Your office provides legal services to the Capistrano Unified School District. On behalf of the district, you have requested advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

- 1) Is a charter school operated by a nonprofit public benefit corporation a "local government agency?" Is it required to adopt a conflict of interest code?
- 2) Are the members of the nonprofit corporation's board of directors required to file a Statement of Economic Interests?
- 3) Are the board members subject to the conflict-of-interest provisions of the Act?
- 4) Are the members of the nonprofit corporation board of directors required to be listed as "designated employees" or "other public officials who manage public investments" in the conflict of interest code?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

CONCLUSIONS

- 1) The charter school is a local government agency. As such, it either needs to adopt a conflict of interest code or be incorporated in the Capistrano Unified School District's conflict of interest code. (Section 87300.)
- 2) The members of the board of directors are required to be designated in the conflict of interest code. Each member is required to file a Statement of Economic Interests.
- 3) The members of the board of directors are subject to the conflict-of-interest provisions of the Act.
- 4) Whether the members of the board of directors are considered "other public officials who manage public investments" is a factual question. If the duties of any of the board members fall under the definitions in regulation 18701(b), these board members are "other public officials who manage public investments" and are filers under section 87200. If not, the board members are considered "designated employees" and file under section 87300.

FACTS

The Capistrano Unified School District has approved a petition for the establishment of a charter school that is operated by a nonprofit public benefit corporation, under the authority of Education Code section 47604, which provides in part:

"(a) Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2, commencing with section 5110 of Division 2 of Title 1 of the Corporations Code)."

Education Code section 47615(a)(1) provides that charter schools are part of the public school system, as defined in Article IX of the California Constitution.

We have no other facts regarding this specific charter school or the nonprofit public benefit corporation.

ANALYSIS

The threshold question is whether the charter school operated by the nonprofit public benefit corporation is a local government agency. This was addressed in the *Walsh* Advice Letter, No. A-98-234, applying the criteria set forth in *In re Siegel*, (1977) 3 FPPC Ops. 62. This opinion is used to determine whether an entity is a local government agency. Under *Siegel*, to determine the nature of a given entity, four criteria are examined:

1. Whether the impetus for formation of the corporation originated with a government agency.
2. Whether it is substantially funded by, or its primary source of funds is, a government agency.
3. Whether one of the principal purposes for which it 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.

In the *Walsh* letter, we determined that all charter schools organized pursuant to Education Code section 47600 et seq. meet the criteria set forth in *Siegel* and are government agencies. Therefore a charter school must be considered a "local government agency" under the Act. "Local government agency" is defined as:

"[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." (§ 82041, emphasis added.)

From the facts provided, it appears that the above factors are met, as follows:

1. This factor is met when an entity is created by statute, ordinance or some official action of another governmental agency. The Capistrano Unified School District approved the petition for the establishment of a charter school under the authority of the Education Code.
2. You stated that the charter school receives state funding. Pursuant to Education Code section 47615(a)(3), charter schools are entitled to full and fair funding. As noted in the *Walsh* letter, charter schools organized under the Charter Schools Act are "substantially funded" by the State of

California. Therefore, this criterion is met for all charter schools organized under the Charter Schools Act.

3. Since the purpose of the charter school is to provide education services and functions traditionally performed by the public school system, this factor is met.
4. Education Code section 47615(a)(1) provides that charter schools are part of the public school system, as defined in Article IX of the California Constitution. Therefore, this factor is also met.

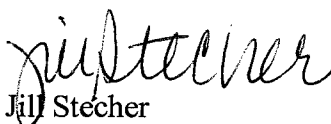
Section 87300 requires that every agency "adopt and promulgate" a conflict of interest code. The term "agency," as defined in section 82003 includes a "local government agency."

The members of the board of directors on the nonprofit public benefit corporation are public officials under section 82048 and are subject to the disclosure and conflict of interest provisions of the Act. For filing and disclosure purposes, you asked whether the members of the board of directors are considered "other public officials who manage public investments." We have no facts with which to answer this question. If the duties of any of the board members fall under the definitions in regulation 18701(b), these board members are "other public officials who manage public investments" and are filers under section 87200. If not, the board members are considered "designated employees" and file under section 87300.

I trust this has answered your questions. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: 
Jill Stecher
Counsel, Legal Division

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