



## FAIR POLITICAL PRACTICES COMMISSION

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July 20, 2011

Robert R. Challinor  
Superintendent  
William S. Hart High School District  
21515 Centre Pointe Parkway  
Santa Clarita, California 91350-2948

Re: Your Request for Informal Assistance  
**Our File No. I-11-096**

Dear Mr. Challinor:

This letter is in response to your request for advice on behalf of the William S. Hart High School District Board, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your inquiry is from the board and not the unnamed official, we are treating your request as a request for informal advice.<sup>2</sup> Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest.

### QUESTION

May a board member of the William S. Hart High School District ("Hart District") who is employed by Desert Sands Public Charter School ("Desert Sands School"), participate in decisions involving a different charter school that operates under the charter of Desert Sands School, where the two schools employ the same "administrative team members" and funds are routinely transferred between the two schools?

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

## CONCLUSION

Yes. Neither school is a source of income to the board member. Any compensation received from a charter school is not “income” within the meaning of the Act because the school is a local government agency and compensation received from a local government agency is not “income” under the Act.

## FACTS<sup>3</sup>

Gloria Mercado-Fortine is a board member of the Hart District. Mission View Public Charter School (“Mission View School”) is chartered by and operating within the boundaries of the Hart District. Desert Sands School is chartered by and operating within the boundaries of the Antelope Valley Union High School District (“Antelope Valley District”). Ms. Mercado-Fortine is employed by Desert Sands School. She is not employed by Mission View School, nor is she a board member of the Antelope Valley District.

Desert Sands School serves as an “umbrella” organization for several charter schools across various school districts, including Mission View School. In March 2011, a certified public accountant reviewed audited financial statements and tax returns for Desert Sands School and Mission View School. You state that the accountant’s findings and opinion indicate that the two schools move funds between each other to assist with operating expenditures and the two schools each have the ability to control or significantly influence the management and operating policies of the other. This is accomplished by having the same five out of six “administrative team members” serving at both schools.

You ask whether, based on the relationship and financial transactions between the two schools, Ms. Mercado-Fortine has a conflict of interest with respect to decisions involving Desert Sands School, even though she is not employed by Desert Sands School.

## ANALYSIS

The Act’s conflict-of-interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) 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.

The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

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<sup>3</sup> Information you provided in our conversation of July 14, 2011 is included in our recitation of the facts.

**Steps 1 and 2. Is Ms. Mercado-Fortine a “public official” within the meaning of Section 87100? Will she be making, participating in making or influencing a governmental decision?**

Under the Act, a “public official” is defined, in part, as “every member, officer, employee or consultant of a state or local government agency.” (Section 82048.) The definition of “local government agency” includes school districts. (Section 82041). As a board member of the Hart District, Ms. Mercado Fortine is a public official. You indicate that Ms. Mercado Fortine makes and participates in making decisions of the Hart District. Thus, she makes and participates in making governmental decisions.

**Step 3. What are the supervisors’ economic interests?**

The Act’s conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests. These economic interests are described in Section 87103 and Regulations 18703-18703.5, inclusive:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more. (Section 87103(a); Regulation 18703.1(a).)
- A public official has an economic interest in a business entity in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- An official has an economic interest in any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- A public official has an economic interest in any source of gifts to him or her if the gifts total \$420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is commonly referred to as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

A source-of-income economic interest is the only economic interest implicated by your facts. Ms. Mercado-Fortine receives a salary from Desert Sand School. Section 82030, which defines “income,” provides that salary, expense reimbursements and similar benefits received

from a state, local, or federal government agency are not "income." The only remaining question is whether Desert Sand School is a state, local, or federal government agency. The Commission's longstanding advice has been that charter schools organized under the statute governing the establishment of charter schools are local government agencies.<sup>4</sup> (*Walsh Advice Letter, No. A-98-234.*)

Because Desert Sand School is a local government agency, salary paid by Desert Sand School is not considered "income" to Ms. Mercado-Fortine. Similarly, if Ms. Mercado-Fortine is deemed to receive compensation from Mission View School, that school would not be a source of income. Accordingly, Ms. Mercado-Fortine may participate in board decisions involving Desert Sand School and Mission View School.

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

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl

Enclosure

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<sup>4</sup> Education Code Section 47600 et seq.