



YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

Complying with California Conflict of Interest Laws

Presented by:
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YOUNG, MINNEY & CORR, LLP
SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

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FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

Sacramento Office: 655 University Avenue, Suite 150, Sacramento, CA 95825

Los Angeles Office: 5200 Lankershim Avenue, Suite 370, North Hollywood, CA 91601

San Diego Office: 591 Camino De La Reina, Suite 910, San Diego, CA 92106

Walnut Creek Office: 500 Ygnacio Valley Road, Suite 190, Walnut Creek, CA 94596



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PUBLIC EDUCATION FOR ALL CHILDREN

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Jerry W. Simmons

Partner

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Jerry Simmons has represented charter schools in every aspect of their operations for more than fifteen years. Between his work at the firm and at the Charter Schools Development Center, Jerry has personally assisted in the development of hundreds of California's charter schools through drafting charter petitions, memorandums of understanding for business and special education services, facilities use agreements, private leases, property purchases, and development of school policies covering every facet of charter school operations. Jerry has also assisted charter schools with employment and labor law matters, board governance and training, zoning and building code compliance, defense of audit findings in both annual and extraordinary audits, compliance with the Brown Act, Political Reform Act, Public Records Act, and Family Educational Records Protection Act.

Jerry has presented workshops for the Charter Schools Development Center and frequently presents at California Charter Schools Association conferences. He also presents at Governance Academies jointly sponsored by the firm and the California Charter Schools Association.

His understanding of governance and public agency laws has been enriched by his own prior service as both a member and President of the Sierra Community College District Board of Trustees. He also previously served as a member of the City of San Jose Parks and Recreation Commission, Chair of the City of San Jose's Youth Commission, Chair of the Santa Clara County Youth Commission and Student Body President at San Jose State University.

PRACTICE AREAS

Board Governance
Facilities
Charter Development
Charter Defense
Independent Study
Public Law

EDUCATION

- Pepperdine School of Law (J.D.)
- Harvard University (M.A.)
- San Jose State University (B.A.)

Lee J. Rosenberg

Senior Counsel

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Lee is an advocate for educational equity and a strong believer that all children should have the opportunity to attend excellent public schools. His practice areas include Charter Development, Charter Defense, and Charter Litigation.

Before joining YM&C, Lee worked for two international law firms focusing on complex litigation on behalf of private and public entities. Lee was recognized as a Rising Star by Super Lawyers Magazine. During his more than seven years as a litigator, Lee developed creative strategies that helped win cases and achieve client objectives, helped clients hone in on and present their best evidence and most compelling themes, used the discovery process and sunshine laws to uncover key information, deposed and cross-examined key witnesses, argued before state and federal courts, and coordinated with media and public relations professionals to advance excellent outcomes in the court of public opinion.

Lee is an alumnus of the Teach for America program. Before attending law school, Lee taught English, math, and social studies at a public middle school in the South Bronx of New York, and developed and taught a visual media curriculum to English language learners and special education students. Lee also previously worked in public policy for a California governor and a United States Secretary of Labor in Washington, D.C.

During law school, Lee studied education law, worked in the legal office of the San Francisco Unified School District, focusing on special education and labor matters, and was a Bay Area fellow in the Education Pioneers program. Lee was also an executive board member of the Hastings Law Journal and graduated from law school magna cum laude.

PRACTICE AREAS


Charter Development

Charter Defense




Charter Litigation

EDUCATION

- University of California, Hastings College of the Law (J.D.)
- Pace University School of Education (M.S.)
- University of California, Berkeley (B.A.)



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Complying with California Conflict of Interest Laws


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THE CHARTER LAW FIRM

Disclaimer




- This presentation cannot substitute for personalized legal advice.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- Sign up for our YMC Communications on our website to receive updated information on the topics discussed today: www.mycharterlaw.com/email-sign-up.




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YM&C Firm Overview



- Partners have over 150 years of collective experience working with charter schools
- 33 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than a majority of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance



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Education Code 47604.1



Charter School Transparency Law Effective January 1, 2020

- Makes express that charter schools must comply with Public Records Act, Brown Act, Political Reform Act, and Government Code 1090, as they are applicable to charter schools and entities managing/operating charter schools.



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Understanding Conflict of Interest Laws



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Conflicts of Interest



Broad Definition

- A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a corporate contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- In short, a conflict of interest is a clash between an individual's duty to his or her office and his or her personal interests.



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Financial Interests



Common Types of Financial Interests Regulated by Conflict Laws

- Ownership or investment in business entity
- Investment in real property
- Source of income
- Source of gifts
- Effect on personal finances



ESP: Financial interests of immediate family members of Board Members and employees typically are covered.



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Government Code Section 1090



Elements

1. Public official (officer, board member, or employee)
2. Making a public contract (for sale or purchase)
3. Public official has a financial interest in the contract



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Government Code Section 1090



What you need to know about Section 1090

- If board member has financial interest, the entire board is prohibited from entering into the contract; *even if it is with the best vendor at the best price and the interested board member abstains.* (Unless an exception applies.)
- Making a public contract is defined very broadly! Applies to earliest discussions, planning, solicitation for bids, etc., not just vote.
- Thus, this statute is, in most respects, the toughest standard to meet.
- Violation of GC 1090 is a felony and the contract void!



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Form 700



Form 700

- Statement of Economic Interests
- When it must be filed:
 - Assuming or reappointment to office or position (within 30 days)
 - Once annually (by April 1st)
 - Leaving office or position (within 30 days)
- Penalties for failure to file:
 - Criminal charges by Atty General or District Atty for deliberate failure to file
 - Civil or administrative action by FPPC or private citizen



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Political Reform Act



“Financial Interest” for Form 700

- Investment in business entity of \$2,000 or more
- Real property investment of \$2,000 or more
- Income of \$500 or more
- Business position in entity
- Gift of \$50 or more



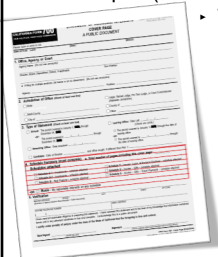
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Form 700



Check the Conflict-of-Interest Code to Determine What You Must Report (Board members: broad disclosure).

- Typically, All Financial Interests
 - Not Your Residence
 - Not Income from a Public Agency
 - Half of Your Spouse's Income
 - Financial Interest within Your Jurisdiction
 - Property – within 2 miles of jurisdiction
 - Investments/Business in jurisdiction
 - Gifts – all gifts inside or outside of jurisdiction



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Form 700



Gifts

- General rule is that you cannot accept more than \$500 from one source in a calendar year.
- General rule is that gifts worth more than \$50 must be reported (one gift or aggregate gifts from same source in a calendar year).
- 1. Many exceptions to both general rules, the most common being:
 - Special Occasions – Birthdays, Holidays:
 - Can be gifts from anyone (other than lobbyists) if the gift giving and taking is proportional.
- 2. Inheritance



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Form 700



Gift (cont.)

- 3. Family Members:
 - Spouse (or former spouse), child, parent, grandparent, great grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, great aunt, uncle, great uncle, niece, great niece, nephew, great nephew, first cousin, or first cousin once removed, or the spouse of any such person. (other than a lobbyist)
- 4. "BFF's"- Long-term friendships:
 - Friends for a "period of time" and gift giving and taking must be proportional. (other than a lobbyist)
- 5. Dating – "bona fide" relationship (other than a lobbyist)
 - Returning or Donating Gifts vs. Reporting



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Common Law on Conflicts-of-Interest



Prohibition Against Conflicts of Interest

- Public official engaging in transaction or influencing decision.
- Creating an appearance of impropriety (financial interest not necessarily required)

Doctrine of Incompatible Offices

- Public official holding two public offices simultaneously
- Offices are incompatible with each other (creating divided loyalties); overlapping jurisdictions

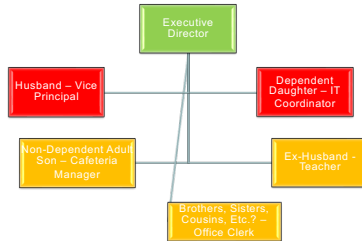


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Scenarios



Employing Family Members



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Scenarios



Contracting

- Principal writes a chapter book intended for 4th-8th grade students.
- Principal directs the school to buy 500 copies from Amazon.com to use in ELA classes.
- Principal receives a \$2 royalty from each sale.
- Is that okay?



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Scenarios



Contracting

- Principal's best friend from college is the greatest literacy coach in the world.
- Okay to hire them to do professional development for two days at \$1,000 per day?
- Okay to hire them to do professional development for two days at \$5,000 per day?
- Does it matter that the Principal has no financial interest in the contract?
- What if before the contract is executed the best friend invites the Principal to use his beachfront mansion in Hawaii free of charge for a week?
- What if the same arrangement takes place every year?



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Scenarios

Contracting

- Principal's adult son operates a catering company.
- Principal loaned the adult son \$50,000 in startup capital, which remains outstanding, but has no equity in the business.
- Okay for the principal to contract with the catering company to provide school meals?

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Scenarios

Contracting

- Board member's spouse is a salaried bus driver for a transportation company; has no equity in the business.
- Okay for the school to enter into a \$100,000 annual contract with the transportation company for the school's field trips?

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Scenarios

Contracting

- Board member of the charter school is also a board member of a nonprofit corporation that provides reading tutors to students.
- Nonprofit corporation charges fees for its services.
- Okay for the charter school to contract with the nonprofit?
- What if the board member is employed by the nonprofit tutoring service as its Executive Director?
- What if the tutoring service is for-profit and the Board member owns 4%?
- What if instead of being a board member or employee of the tutoring service, the board member is the landlord of the tutoring service?

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Scenarios



Self-Dealing/Gifts of Public Funds

After a multi-month battle to get the school's charter renewed, Executive Director invites parents and employees who testified in favor of the renewal to a restaurant for dinner and charges it on the school credit card. Is that okay?



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Scenarios



Self-Dealing/Gifts of Public Funds

Executive Director thinks they would be more efficient in their role if they had a Samsung Galaxy tablet and smart watch and uses the school credit card to make the purchase at Best Buy. Is that okay?



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Scenarios



Self-Dealing/Gifts of Public Funds

Executive Director spills coffee on their pants en route to giving a presentation to their authorizer and stops at Target to buy a new pair of pants. Okay to charge it to the school credit card?



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QUESTIONS?

**THANKS FOR
ATTENDING TODAY!**

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