



YOUNG, MINNEY & CORR, LLP



Palisades Charter High School Employee Board Members & Conflicts of Interest

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THE CHARTER LAW FIRM

Introduction



The legitimacy of the Board's actions are directly tied to the propriety of its decision-making.

Goals



- **Educate the Board on law, environment for charter schools and best practices**
- **Aid Board in adoption of a defensible recusal policy**

Legal Landscape for Charter Schools & Conflict of Interest Laws

Political Landscape



- **Charter schools operate with public money**
- **Charter schools are highly scrutinized**
- **Conflicts of interest issues for charter schools can be a basis for civil or criminal prosecution, charter revocation, negative headlines and legislative proposals**
- **Employees on boards raise the greatest number of conflict of interest questions**

Political Landscape



- **For most public agencies, employees are legally prohibited from sitting on the Board**
- **LAUSD & LACOE do not allow new charter schools to place employees on the Board**
- **Employees on boards can cause internal conflict between Board members and administration**



California Laws

Common Law Prohibitions



Purpose of California Conflict of Interest Laws

To ensure that those persons charged with conducting “the people’s business” do so without any divided loyalties or personal benefit. In this regard, one court stated, “the duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual that holds the office.”

(*Thomson v. Call* (1985) 38 Cal. 3d 633, 648.)

Common Law Prohibitions

directorship, e
stewardship, her
integrity
noun 1. adheren
principles; sour

A good expression of the common law doctrine is found in Noble v. City of Palo Alto (1928) 89 Cal.App. 47, 51:

“A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.”

Common Law Prohibitions



Public officials must avoid placing themselves in positions in which personal interests may come into conflict with duty to the public.

- **Mere appearance of impropriety an issue**
- **Applies to non-financial interests as well as financial interests (broader set of interests than other laws)**

Education Code Prohibitions



Education Code Section 35107

“An employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.”

The Political Reform Act



“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.”

(Gov. Code § 87100.)

The Political Reform Act



Common (Non-Exhaustive List) Obvious Areas of Conflict:

- Board member's compensation and benefits
 - Includes Board member's individual compensation or salary schedule for all similarly situated employees
- Collective bargaining discussions
- Board member's immediate family
- Hiring, evaluating or discipline/dismissal of co-workers or management
- Budget approval

The Political Reform Act



Recusal process must ensure no influence or attempt to influence in any way – this means, if you are a Board member with a conflict of interest, you should leave the room and not speak to Board members or decision-makers outside a Board meeting.

Government Code 1090



“Members of the Legislature, state, county, district, judicial district, and city officers or employees 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.”

Government Code 1090



WARNING: SOME PROSECUTORS AND AGENCY OFFICIALS BELIEVE SECTION 1090 APPLIES TO CHARTER SCHOOL BOARD MEMBERS – SECTION 1090 WOULD PROHIBIT ALTOGETHER AN EMPLOYEE FROM SITTING ON A BOARD

Corporations Code Duties



Duty of Loyalty

“A director [i.e. Board member] shall perform the duties of a director ... in good faith, in a manner such director believes to be in the best interests of the corporation....”

Corporations Code Section 5231(a)

Consequences / Penalties for Violations

Consequences/Penalties for Violations



- **Civil and Criminal Liabilities for the Individual Board Member**
- **Impugned Reputation**
- **Charter Revocation**
- **Lost Public Trust**
- **Diminished Effectiveness of Board/School**

Practical Concerns/Hypotheticals



WHILE NEGOTIATIONS ARE ONGOING FOR A 5% INCREASE IN SALARIES, ONE EMPLOYEE BOARD MEMBER ARGUES TO NOT PURCHASE AN INNOVATIVE STUDENT TECHNOLOGY PACKAGE THAT WILL ASSIST LOW ACHIEVERS.

Practical Concerns/Hypotheticals



**BOARD CONSIDERS THE
DISCONTINUATION OF A COOKING
CLASS WHICH ONE OF THE
EMPLOYEE BOARD MEMBER
TEACHES AS AN ADJUNCT DUTY.**

Next Steps



Board review and possible adoption of Recusal Policy



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**QUESTIONS AND
RESPONSES**

**THANKS FOR
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