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Attorney General Opinion Confirms Charter Schools Must Comply with Key Public Integrity Laws

The California Attorney General recently issued an opinion (Opinion No. 11-201) addressing the long-debated question of whether California charter schools must comply with key public integrity laws, including the Ralph M. Brown Act, California Public Records Act, and laws prohibiting financial and other conflicts of interest under Government Code section 1090 and the Political Reform Act of 1974. The Attorney General confirmed that charter schools and their governing bodies are subject to these laws—just like public school districts and county offices of education.

The Attorney General concluded that charter schools are held to the same standard as public school districts. The opinion explained that, even though charter schools have attributes of both public and private entities, they still receive public funds and carry out the important public function of providing a free education to students. In essence, charter schools are akin to “school districts” and their governing officials are “officers of public schools.”

This opinion comes after a series of failed legislative attempts to expressly require charter schools to comply with these laws. Previously, some charter schools have agreed to abide by these laws (or their authorizers have required such compliance) in their charters, memoranda of understanding, conflict of interest codes, and/or corporate bylaws. However, other charter schools have taken the position that a provision of the Education Code—commonly referred to as the “mega waiver”—exempts them from complying with such laws.

The most controversial application of these laws to charter schools is Government Code section 1090, which generally prohibits public officials from being financially interested in public contracts. Since most charter schools are operated by non-profit public benefit corporations, some charter school proponents have asserted that they are only bound by the conflict of interest laws applicable to *corporations*. Such corporate laws, however, do not include the same extensive prohibitions against financial self-dealing and other conflicts of interest.

Attorney General opinions are advisory and not legally binding. However, California courts have given “great weight” to these opinions. Consequently, charter schools and charter authorizers should evaluate how this opinion may impact their policies and practices, including the following:

Charter Authorizers

- When reviewing a charter petition, evaluate the proposed governance functions of the charter school, including the governance section(s) of the petition, corporate bylaws, and conflict of interest code to ensure that such documents meaningfully address how the charter school will comply with the Brown Act, Public Records Act, and conflict of interest laws, including Government Code section 1090.

- For charter schools currently in operation, review their existing policies, practices, and governance documents to determine whether they sufficiently address compliance with these laws.
- Evaluate your district's oversight policies, practices, and checklists to ensure they provide for monitoring of charter school compliance with these laws, including any corrective actions that may be warranted.

Charter Schools

- Review existing policies, practices, and governance documents to determine whether revisions may be necessary to comply with these laws.
- Consider providing professional development workshops, in-service trainings, written guidance, etc. for charter school administrators, members of the charter school's board of directors, or others on how these laws affect charter school governance and operations.

If you have any questions regarding this Attorney General opinion or how it impacts charter school authorization, operations, oversight, or other matters, please contact one of our six offices.

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