



California Attorney General Declares Charter Schools Subject to Multiple Transparency Laws

California Attorney General Xavier Becerra published a long-awaited opinion on December 26, 2018, declaring California charter schools are subject to the Public Records Act, Brown Act, Government Code Section 1090, and the Political Reform Act. The opinion also states that books and records of California charter schools authorized by a school district or county board of education are subject to review and inspection by a grand jury. *Violations of some of these laws can lead to criminal penalties and fines and violations of any of these laws can lead to revocation of a charter school's charter if the violations are not cured in a timely fashion.*

The Attorney General Opinion (No. 11-201), although not legally binding, is entitled to “great deference by the courts[.]” *Stribling's Nurseries, Inc. v. County of Merced*, 232 Cal.App.2d 759, 763 [43 Cal.Rptr. 211]. Thus, the opinion is likely to be adopted by the courts in future criminal and civil proceedings. The Fair Political Practices Commission has also previously opined that the Political Reform Act applied to charter schools. Some local District Attorneys had already filed charges or were considering filing charges against charter school board members and administrators under these statutes prior to the Attorney General opinion, and we believe that the opinion is likely to lead to more such actions being filed. *Case law also concludes that conflict of interest laws extend to independent contractors doing work on behalf of charter schools in some cases.*

The Attorney General Opinion is predicated upon the holding that charter schools are a class of public schools, as they are funded by state taxes, required to meet statewide educational standards, and required to conduct pupil assessments just like non-charter public schools. The opinion also cites the Education Code in noting that a charter school is under “the exclusive control of the officers of the public schools” and is a “school district” for the purposes of the allocation of education funds. The Attorney General quoted *Wilson v. State Bd. Of Education* (1999) 75 Cal.App.4th 1125, 1129, in stating that “[g]overnment officials of a charter school are themselves ‘officers of public schools to the same extent as members of other boards of education of public school districts.’” Thus, the Attorney General opined that these laws also apply to charter schools operated by nonprofits.

The Brown Act and the Public Records Act

The Ralph M. Brown Act provides public access to meetings of local government agencies. The California Public Records Act requires disclosure of records to the general public upon request. In the opinion, the Attorney General points out that the Brown Act and the Public Records Act are applicable to a “local agency” and to the “legislative body” of a local agency. Considering the language in both Acts and the State Constitution, the Attorney General writes that “‘school districts’ are subject to the sunshine laws, and charter schools are ‘school districts’ for purposes

of receiving state funding. What charter schools do with the public money that they receive is a matter of legitimate concern to the taxpaying public.” The Attorney General is “convinced that the public has a right to expect transparency from charter schools because they are licensed and paid by the state to participate in the core function of educating California’s children.”

The Political Reform Act and Government Code Section 1090

The Political Reform Act of 1974 and Government Code Section 1090 (commonly referred to as conflict of interest laws) serve as the legal bedrocks of governmental ethics in California. The Political Reform Act regulates public official conduct in making, participating in making, or in any way attempting to use the officials’ position to influence a governmental decision in which the official has a financial interest. The Act also requires disclosure of financial interests annually on a Statement of Economic Interest (Form 700). Government Code Section 1090 generally precludes a public governing board from entering into a contract when a member of the board has a financial interest in the contract. A violation of Section 1090 is a felony and voids the contract involved. **For this reason, charter schools should not enter into contracts in which any of its Board members or administrators might financially gain either directly or indirectly without first consulting legal counsel. Additionally, charter schools with employees, vendors, landlords or independent contractors serving on their Board should seek legal counsel before continuing this practice.**

The Attorney General Opinion concludes that a charter school is an “agency of the state, formed pursuant to general law ... for the local performance of governmental ... functions ...” Therefore, charter school board members are deemed to be “officers of public schools to the same extent as members of other boards of education of public school districts” and are subject to the prohibitions of Government Code Section 1090. The opinion cites a 1998 Fair Political Practices Commission Advice Letter (A-98-234) that found a charter school was a “local government agency” within the meaning of the Political Reform Act and therefore was subject to the Act’s conflict-of-interest provisions.

Obtaining More Information and Training

Young, Minney & Corr, LLP will provide further information about how charter school administrators and Board members can comply with these laws at workshops in San Diego (January 22), the Los Angeles Area (January 23), the San Francisco Bay Area (January 29), and Sacramento (January 30). Register for the **2019 Charter Schools Critical Issues Symposium** at <http://mycharterlaw.com/workshops/>. Sign up now, as space is limited.

For additional information about updating your charter, policies, procedures and practices to reflect the guidance provided by the Attorney General, please contact Jerry Simmons at jsimmons@mycharterlaw.com, or Wayne Strumpfer at wstrumpfer@mycharterlaw.com; 916-646-1400. Visit our website at www.mycharterlaw.com.

Young, Minney & Corr, LLP's Legal Alerts provide general information about events of current legal importance; they do not constitute legal advice. As the information contained here is necessarily general, its application to a particular set of facts and circumstances may vary. We do not recommend that you act on this information without consulting legal counsel.