

CLIENT NEWS BRIEF

Sunshine Laws To Begin Shining On Charter Schools: Charter Schools Subject To Public Transparency Laws

The California Attorney General recently issued a long-awaited opinion addressing the applicability of certain “sunshine” laws to charter schools. Specifically, the Attorney General concluded that California charter schools and their governing bodies are subject to the Ralph M. Brown Act (Brown Act), the California Public Records Act (Public Records Act), Government Code section 1090 and the Political Reform act of 1974. The opinion further states that the books and records of schools chartered by either a school district or a county board of education are subject to review and inspection by a grand jury.

Background

By design, California charter schools are explicitly exempt from many laws that apply to school districts. However, the laws addressed by the Attorney General opinion are some of the broadest public integrity laws in the state, and have never explicitly exempted charter schools. It should be noted that the request for this opinion was made seven years ago. It is our understanding that the Attorney General was waiting for the Legislature to answer these questions. Under Governors Schwarzenegger and Brown, the Legislature adopted bills stating that charter schools did need to comply with the Brown Act, Public Records Act, and conflicts of interest laws, only to have such bills vetoed by both Governors.

The Ralph M. Brown Act and the California Public Records Act

The Brown Act guarantees the public’s right to attend and participate in meetings of local legislative bodies. The Public Records Act establishes that the records of public agencies generally must be disclosed to the public when requested. The majority of charter school petitions in California state that the school will comply with the Public Records Act and Brown Act. However, prior to this opinion, there was frequent debate as to whether charter schools were, in fact, required by law to comply with these Acts.

In answering the question, the Attorney General observed that the Education Code contains a section establishing charter schools as school districts. Interpreting this principle liberally, the Attorney General determined that both Acts apply to charter schools in the same way that they apply to school districts or other local public agencies. The Attorney General’s reasoning was that both charter schools and school districts rely on public money. Therefore, both have an obligation to be transparent.

Government Code Section 1090

Government Code section 1090 is a broad prohibition against self-dealing in public contracts by public officials. Over time, the scope of section 1090 has expanded to include any agency or public official of the state. However, whether this conflict of interest law is applicable to charter schools has been the subject of significant debate over the past several years. Relying on prior case law, the Attorney General opined that the term “any agency or official”

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should be liberally interpreted to include charter schools and their officials. Therefore, members of charter schools' governing boards should be deemed to be public officials in the meaning of section 1090, and are subject to the provisions of the statute.

Political Reform Act of 1974

The purpose of the Political Reform Act is to ensure that public officials perform their duties with impartiality and disclose any financial interests which may impact their vote. In 1998, the Fair Political Practices Commission (FPPC), which is charged with interpreting the Political Reform Act, concluded that board members of a charter school's nonprofit corporation were subject to the Political Reform Act's provisions on conflicts of interest. The Attorney General, in this opinion, gives deference to the FPPC in its decision that the governing body of a charter school that is organized as a corporation is subject to this law. Due to the prior FPPC opinions on this issue, many of California's charter schools already operate in compliance with the Political Reform Act.

Books and Records in Grand Jury Proceedings

Generally, the books and records of school districts and county boards of education are subject to review during grand jury proceedings in accordance with California Penal Code section 933.6. The Attorney General opinion concludes that "any nonprofit corporation established by or operated on behalf of a public entity" which includes any charter school chartered by a local school district or county board of education, is subject to section 933.6.

However, the opinion concludes that charter schools that are chartered by the State Board of Education are not subject to grand jury review. This is because the State Board of Education is considered a state agency and not a local public entity for purposes of section 933.6. While these charter schools' books and records would not be subject to grand jury proceedings, they would still be subject to audit by the California State Auditor.

Takeaways

In summary, the Attorney General's long-awaited opinion states definitively that public integrity laws applicable to other local educational agencies are also applicable to charter schools. While Attorney General opinions are advisory, and not binding, they provide guidance and insight as to how a court could interpret various issues, and therefore are given great deference.

As a result, this opinion will likely prompt stricter adherence by charter schools with laws from which some have argued exempted charter schools. Moving forward, charter schools should independently conform their policies and practices to the Attorney General's guidance that these laws apply to them. Additionally, an authorizing school district or county board of education should evaluate, and amend if necessary, its policies and procedures to ensure its charter schools' compliance with these laws as part of the authorizer's oversight responsibilities.

For additional information regarding the Attorney General's opinion and its potential impact on charter schools and school districts, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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