

TWIN RIVERS CONFLICT OF INTEREST: DO THE RIGHT THING

SUMMARY

The Grand Jury was dismayed by a series of articles in *The Sacramento Bee* (The *Bee*) about allegations of conflict of interest by a Trustee of the Twin Rivers Unified School District Board of Trustees (TRUSD Board). The Trustee voted to approve a charter school, was appointed to represent the TRUSD Board on the charter school board, and later received payment under a consulting contract with that charter school. This led the Grand Jury to investigate:

- The Trustee's actions which gave rise to the allegations of conflict of interest
- The TRUSD Board's actions upon notice of the allegations of conflict of interest
- The Superintendent's actions to adequately address the allegations of conflict of interest

The TRUSD Board and Superintendent are tasked with providing a public service to their community. Public service is a public trust, requiring officials and employees to adhere to conflict of interest laws above personal financial interests. In addition, effective governance within the TRUSD Board requires action and accountability for eliminating even the appearance of a potential conflict of interest to safeguard the public's trust in local government.

It is troubling that the Trustee, the TRUSD Board, and the Superintendent failed to perceive the importance and immediacy of addressing the allegations of conflict of interest. Conflict of interest laws prohibit public officials from participating in governmental decisions affecting their financial interests, and forbid public officials, including school district boards, from being financially interested in any contract made by them in their official capacity, or by any board of which they are members.

Furthermore, effective governance within a school district depends on officials and staff knowing, understanding, and following the duties and responsibilities of a public servant, as well as adhering to applicable laws and policies. Board members and district employees should hold themselves to the highest standards of ethical conduct.

BACKGROUND

The Highlands Community Charter & Technical Schools Board of Directors (HCCTS Board), an independent 501(c)(3) nonprofit corporation, submitted a petition to establish the Highlands Community Charter School (HCCS) to revive technical education in the TRUSD. The HCCS provides high school diplomas for underserved adults 22 years of age and older within the district boundaries, including immigrants and ex-offenders.

In July 2015, The *Bee* reported that the Fair Political Practices Commission (FPPC) opened an investigation into whether a Trustee of the TRUSD Board violated the Political Reform Act (PRA) conflict of interest laws. The Trustee helped to get HCCS approved by the TRUSD Board, and the Trustee's consulting firm received \$13,000 from the charter school. According to the PRA, a public official may not make, participate in, or influence a governmental decision that will have a reasonably foreseeable material financial effect on the official.

The PRA was passed by California voters in June 1974. The provisions regulate conflict of interest in public office and represent the most significant state-level response to the culture of corruption that was believed to be pervasive. The PRA requires state and local agencies to adopt conflict of interest codes, and public disclosure of personal financial information by officials who routinely participate in decision making.

Government Code (GC) Section 1090(a) forbids public officials, including school district boards, from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. If a conflict of interest exists, a board member must publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest, and recuse himself or herself from discussing and voting on the matter.

METHODOLOGY

The Grand Jury interviewed:

- Members and former members of Highlands Community Charter & Technical Schools Board of Directors (HCCTS Board)
- Members of the TRUSD Board of Trustees
- TRUSD Superintendent and Deputy Superintendent
- Members of the Highlands Community Charter School (HCCS) staff
- Executive Director of the Charter Schools Development Center

The Grand Jury reviewed many documents including:

- HCCTS Board Meeting Agendas and Minutes
- TRUSD Board Meeting Agendas and Minutes
- Articles published in *The Bee* regarding the TRUSD conflict of interest issues
- HCCTS Board and HCCS staff emails and correspondence
- TRUSD Board Bylaws and HCCTS Board Bylaws
- Memorandum of Understanding (MOU) between TRUSD and HCCTS
- California School Board Association documents concerning school district, board, and Superintendent responsibilities
- Laws, including Education Code, related to conflict of interest

The Grand Jury also received general information regarding charter schools from the Superintendent of the Sacramento County Office of Education.

DISCUSSION

The Trustee Conflict of Interest Allegations

The Trustee of the TRUSD Board worked on a regular basis with the founders of the Highlands Community Charter School (HCCS) to get the charter school petition approved by the TRUSD Board. The trustee stated to the Grand Jury that there was an oral agreement between the HCCS founding members and the Trustee regarding the roles and paid positions that each would hold after approval of the HCCS petition. The Trustee later contradicted this statement to the Grand Jury and contended that there was no agreement to receive any monetary gain.

The Trustee's partnership with the HCCS founders and the alleged agreement involving a paid position for the Trustee created a potential conflict of interest. In this situation, a board member must publicly identify the financial interest that gives rise to a potential conflict of interest, and recuse himself or herself from discussing and voting on the matter. On March 4, 2014, the TRUSD Board unanimously approved the Highlands Community Charter & Technical Schools Board of Directors (HCCTS Board) petition with a 7-0 vote. However, the Trustee neither chose recusal from the TRUSD Board discussion or vote, nor publicly declared any financial interest as required by conflict of interest laws. After the TRUSD Board approved the charter petition, the Trustee requested and was appointed as the TRUSD Board representative on the HCCTS Board.

In September 2014, the Trustee, as a principal with LAED Consulting, entered into a consulting contract with the HCCTS Board and received two

checks, totaling \$13,000. The checks were written in the name of the Trustee, DBA (doing business as) LAED Consulting. The Grand Jury received conflicting information from the Trustee and the LAED business partner regarding which partner received the final disposition of the \$13,000 contract payments. The *Bee* reported that the Trustee split the money with the partner. The Trustee and the partner stated to the Grand Jury that the entire amount was given to the partner. We were unable to determine the accuracy of their statements. However, the Trustee's financial interest in LAED Consulting created a potential conflict of interest. The Trustee's actions appear to be in conflict with GC Section 1090(a), which prohibits officials, including school district boards, from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

The discussion and vote on the contract between LAED Consulting and the HCCTS Board occurred while the Trustee was a TRUSD representative to the HCCTS Board. The Trustee did not vote on the LAED contract but did participate in HCCTS Board discussions regarding the vote on the contract. As stated above, a board member must publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest, and recuse himself or herself not only from voting but also from discussing the matter.

The terms of the contract required HCCTS to pay LAED Consulting \$6,500 per month for five consecutive years. After HCCS and HCCTS Board raised questions about the potential conflict of interest, the Trustee requested removal of the Trustee's name from the contract, and the HCCTS Board approved the modification. Nine days later, the HCCTS Board terminated the contract. Efforts to obtain monetary compensation for the Trustee continued. The HCCTS Board approved a change in bylaws that created a paid position for the TRUSD representative on the HCCTS Board. At the time of the Grand Jury's investigation, this change in bylaws was under legal review.

During the interview, the Trustee stated repeatedly that there was no conflict of interest. However, TRUSD Board bylaws and the HCCTS charter petition include the provision to adhere to conflict of interest laws in GC 1090. In addition, the MOU between TRUSD and the HCCTS Board included provisions to comply with all conflict of interest laws generally applicable to the TRUSD Board. Therefore, the Trustee was subject to conflict of interest laws.

TRUSD Board of Trustees Responsibilities

TRUSD Board bylaws state that the Board of Trustees may appoint any of its members to serve as its representative on defined boards. When making such appointments, the Twin Rivers Board is required to clearly specify the authority and responsibility involved in the appointed position. A TRUSD Board member has no individual authority to vote on the HCCTS Board, unless designated to do so. The Trustee was not granted such authority, but functioned for over a year as a voting member on the Highlands Board without the knowledge of the Twin Rivers Board President.

During the Trustee's appointment as Twin Rivers Board representative to HCCTS Board, the Highlands Board was the only charter school board in Twin Rivers to have an appointed representative. Generally, school boards decide not to appoint a representative to a charter school board because, absent clearly defined roles and responsibilities, it is unclear whether a representative represents the interests of the school district or the interests of the charter school.

In a letter to the TRUSD Board President and Superintendent, the HCCTS Board raised the conflict of interest issue that occurred when the Trustee entered into a consulting contract with the Highlands Board. The letter also requested that the Twin Rivers Board remove the Trustee from the Highlands Board. After learning of these concerns, another Trustee made multiple attempts to have these issues added to the TRUSD Board agenda for discussion and action. There were insufficient votes to put these issues on the agenda, and they were never formally addressed by the Twin Rivers Board.

The Twin Rivers Board failed to clearly specify the authority, responsibility, and oversight for the TRUSD Board representative to the HCCTS Board. The Twin Rivers Board also failed to take appropriate action regarding the Trustee's alleged conflict of interest.

TRUSD Superintendent's Responsibilities

Although authority rests with the Board as a whole, the Superintendent accepts leadership, responsibility, and accountability for implementing the vision, goals, and policies of the district.

The TRUSD Superintendent was unaware of any clear role, responsibilities, or authority assigned to the appointed Twin Rivers Board representative on the HCCTS Board. Furthermore, the Superintendent did not know that the Trustee was a voting member of the Highlands Board. However, the

Superintendent was aware that the Trustee had entered into a contract with the HCCTS Board. The Superintendent knew of the HCCTS written request to the Twin Rivers Board to remove the Trustee from the Highlands Board.

The Superintendent had individual discussions with each member of the TRUSD Board regarding the Trustee's contract with the HCCTS Board, and the negative public perception that could result. After the TRUSD Board took no action, the Superintendent failed to provide the Board with assertive management, direction, and accountability.

Late in our investigation, the Superintendent informed us that the Trustee resigned as Twin Rivers' representative on the HCCTS Board and that the TRUSD Board recently completed conflict of interest training.

FINDINGS

- F1. The Trustee acted contrary to conflict of interest laws, by voting and/or participating in Twin Rivers Unified School District Board of Trustee (TRUSD Board) and Highlands Community Charter & Technical Schools Board of Directors (HCCTS Board) discussions and entering into a contract in which the Trustee had an alleged financial interest.
- F2. The TRUSD Board failed to provide clear direction and oversight regarding the duties and responsibilities of a trustee appointed to represent the TRUSD Board on the HCCTS Board.
- F3. The TRUSD Board violated public trust by inadequately addressing the allegation of conflict of interest on the part of a Trustee.
- F4. The TRUSD Superintendent failed to take actions needed for the TRUSD Board to clarify and adhere to Board policy regarding conflict of interest laws pertaining to public officials.

RECOMMENDATIONS

- R1. The Twin Rivers Unified School District Board of Trustee (TRUSD Board) should ensure that no trustee serves as a representative on any board or TRUSD Board position/office where there is a potential conflict of interest.
- R2. The TRUSD Board President and Superintendent should ensure that board members receive training every two years on conflict of interest laws and that this training occur immediately for all new board members. All trainings should be documented in records maintained by TRUSD Board.
- R3. The TRUSD Board President and Superintendent should review Board policy and bylaws and make necessary changes to clearly specify the authority and responsibilities involved when the Board appoints a Board representative to a charter board of directors.

REQUEST FOR RESPONSES

Penal Code sections 933 and 933.05 require that the following officials submit specific responses to the findings and recommendations in this report to the Presiding Judge of the Sacramento County Superior Court by September 29, 2016:

- Board of Trustees, Twin Rivers Unified School District – All Findings and Recommendations
- Superintendent, Twin Rivers Unified School District – All Findings and Recommendations

Mail or hand-deliver a hard copy of the response to:

Kevin R. Culhane, Presiding Judge
Sacramento County Superior Court
720 9th Street, Department 47
Sacramento, CA 95814

In addition, email the response to:

Becky Castaneda, Grand Jury Coordinator at castanb@saccourt.com