

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Public Ethics Commission

From: Office of the City Attorney

Date: April 15, 2005

RE: Ethics Commission Open Meeting Jurisdiction Over Oakland Unified School District Board

I. Introduction

At its March 2005 meeting the Public Ethics Commission (“Ethics Commission”) requested the following opinion from the City Attorney’s Office. The Commission is reviewing allegations made against the Oakland Unified School District Governing Board (Oakland School Board).

II. Question

Do the “open meeting” provisions of the Oakland Sunshine Ordinance apply to the Oakland School Board? ¹

III. Summary Conclusion

No case addresses directly the situation in which a city ethics commission seeks to enforce a city open government ordinance against a school board. However, in almost every case where a city, whether by charter or ordinance, seeks to require a school district to abide by a city law, the courts have denied enforcement where there is conflicting state law. The reasoning is that school districts are agencies of the state, and the cities are subject to the state’s overriding power. A court will likely find that the state Education Code preempts much of Oakland’s Sunshine Ordinance.

However, there is one section of the Sunshine Ordinance (O.M.C. section 2.20.050) that incorporates fully the state Brown Act. That section of the Sunshine Ordinance is fully

¹ This opinion does not opine on whether Oakland’s campaign reform provisions apply to the Oakland School Board. There is a strong argument that they do because of a specific grant of authority by the state. (Cal.Const.Art. IX, §16(a).)

consistent, indeed coincident, with state law. There is a good argument that that section of the Sunshine Ordinance is not preempted by state law.

IV. Background Facts

Complainants have filed complaints No. 04-09 and 05-04 with the Ethics Commission. The complaints allege that the Oakland School Board violated the state Brown Act and Education Code.

V. Analysis

The Argument For Application of the Sunshine Ordinance to the Oakland School Board

The open meeting provisions of the Oakland Sunshine Ordinance apply to “local bodies.” “Local bodies” include “Any board, commission, task force or committee which is established by City Charter, chapter or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners[.]” (O.M.C section 2.20.030(E), emphasis added.) The Oakland School Board is a board established by the City Charter. (City Charter section 404.) Therefore, the Oakland Sunshine Ordinance should apply to the Oakland School Board.

Normally, the analysis would end there. However, because of the special character of school districts, analysis of state law is necessary to provide a complete answer.

Municipal Authority Over School Affairs Is Subject To The State’s Overriding Power

The California Supreme Court has said that the public schools are “a matter of statewide rather than local or municipal concern.” (Hall v. Taft, 47 Cal.2d 177, 179 (1956).) The state legislature has “comprehensive powers” in relation to the schools’ “establishment, regulation and operation.” (Id.; California Teachers Association v. Hayes, 5 Cal.App.4th 1513, 1524 (1992).) As such, school districts, are agencies of the state. (Hall v. Taft, 47 Cal.2d at

179, California Teachers Association v. Hayes, 5 Cal.App.4th 1513, 1524 (1992).) Along the same lines, another court has said that “The [state] Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints.” (California Teachers Association v. Hayes, 5 Cal.App.4th 1513, 1524 (1992).)

Charter provisions, ordinances and regulations relating to schools are therefore subject to preemption by conflicting state law. (Whisman v. San Francisco Unified Sch. Dist., 86 Cal. App.3d 782, 789 (1978).) One court has gone as far to say that “Public schools cannot be regulated by city or county ordinances in a field occupied by the state.” (Tustin Heights Association v. Board of Supervisors, 170 Cal.App.2d 619, 630 (1959).) Consequently, courts have held that regulation of the education system by the Legislature controls over any inconsistent local attempts at regulation or administration of the schools. (California Teachers Association, 5 Cal.App.4th at 1524.)

So, for example, a city cannot impose its building ordinances upon a school district. (Hall v. Taft, 47 Cal.2d at 179.) School districts may also exempt themselves from local zoning ordinances. (Gov't Code § 53091.) A city charter cannot regulate the manner in which school districts grant tenure. (Whisman v. San Francisco Unified Sch. Dist. 86 Cal. App.3d 782). And cities cannot bind school districts on waste collections services. (Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc., 43 Cal.App.4th 630 (1996).)

Oakland's Sunshine Ordinance And State Law May Be Inconsistent

There is a strong argument that state legislation occupies the field regarding the conduct of school board meetings. Education Code sections 35140-35149 specify notice of meetings, placement of items on the agenda for school boards, the taking of minutes and “open forum.” The Education Code also specifies that the state Brown Act applies to school

board meetings. (Education Code section 35145.) The Brown Act also specifies noticing requirements and the public addressing the body. Of course these are some of the same areas regulated by Oakland's Sunshine Ordinance.

Indeed, some provisions of the Sunshine Ordinance may be inconsistent with the Education Code and Brown Act. One example is "open forum." The Sunshine Ordinance requires "open forum" for special meetings:

Every agenda for every regular or special meeting shall provide an opportunity for members of the public to directly address a local body on items of interest to the public that are within the local body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2(b). (O.M.C. section 2.20.150(b), emphasis added.)

In contrast, the Education Code and the Brown Act do not require a school board to have a "open forum" at a special meeting.

Because the state has "occupied the field" concerning the conduct of school board meetings, a court would likely hold that enforcement of much of the Sunshine Ordinance against the Oakland School Board is preempted by state law.² If it were otherwise, it is easy to imagine a scenario where a procedural misstep involving a local sunshine ordinance could halt or delay school board action on a school building, personnel matter or waste management contract, areas which the courts have already held that local government cannot intervene.

While the counterargument may be made that municipalities often govern the election, terms and number of school board members, there is a specific exception in the state Constitution to cover this area. Cities can legislate in this area only because the state law grants charter cities the permission to legislate in the area of school board elections. (California Const. Art. IX, §16(a).)

² The Brown Act does allow a local "legislative body" to adopt additional requirements upon itself than that provided by the Brown Act. This provision allows the City Council, for example, to impose the additional requirements of the Sunshine Ordinance upon itself. However, there is no evidence that the Oakland School Board, a separate legislative body, adopted the Oakland Sunshine Ordinance to apply to itself.

Section 2.20.050 of the Sunshine Ordinance May Not Be Preempted

One section of the Sunshine Ordinance is, however, different from all the others. Section 2.20.050 of the Sunshine Ordinance is different because all it does is incorporate, in total, the state Brown Act.

2.20.050 Meetings to be open and public: Application of Brown Act.

All meetings of local bodies specified in Sections 2.20.030(E) and Section 2.20.040(A) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) unless greater public access is required by this ordinance, in which case this ordinance shall be applicable.

As explained earlier, the Oakland School Board is a “local body” under section 2.20.030(E).

Sunshine Ordinance section 2.20.050 and state law are not inconsistent: they are exactly the same. The Sunshine Ordinance calls for the application of the state Brown Act to the school board, with which the school must comply under state law.

Though dicta, the California Supreme Court has said that cities may create local regulations “beneficial to and in furtherance of the school system,” provided that the provisions do not conflict with state law. (Butterworth v. Boyd, 12 Cal.2d 140, 152 (1938).) In Butterworth, the court rejected numerous arguments challenging a city’s salary deductions from city employees and teachers to pay for a health care plan. The health care plan was “beneficial to an in furtherance of the school system” and did not conflict with state law.

Thus, when the Public Ethics Commission enforces O.M.C. section 2.20.050, it is merely enforcing state law and state policy. There is no inconsistency or conflict. Indeed, enforcement of the Sunshine Ordinance is consistent with, supportive of and coincident with the requirements and exceptions of the Brown Act and “in furtherance of the school system.”

No preemption of section 2.20.050 therefore should occur so long as the Ethics Commission enforces only the Brown Act against the Oakland School Board and does so by following the procedures set forth in the Brown Act.

The Public Ethics Commission Has No Jurisdiction to Investigate or Enforce Alleged Violations of the state Education Code

Nothing in the City Charter or the Ethics Commission's enabling ordinance provide the authority for the Ethics Commission to investigate or enforce violations of the state Education Code.

VI. Conclusion

Where a city seeks to require a school district to abide by a city law, the courts have denied enforcement where there is conflicting state law. A court will thus probably find that the state Education Code preempts much of the open meeting sections of the Oakland's Sunshine Ordinance. However, O.M.C. section 2.20.050, which incorporates fully the state Brown Act, will probably not be preempted.

Very truly yours,

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City Attorney

Attorney assigned: Morodomi

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