

YM&C
YOUNG, MINNEY & CORR, LLP

Brown Act & Conflicts of Interest Law Workshop

Presented by:
Wayne K. Strumpfer
Young, Minney & Corr, LLP
655 University Ave., Suite 150
Sacramento, CA 95825
(916) 646-1400
wstrumpfer@mycharterlaw.com
www.mycharterlaw.com

THE CHARTER LAW FIRM

1

SB 126 and the new Education Code Section 47604.1

YM&C
YOUNG, MINNEY & CORR, LLP

2

Education Code 47604.1

Charter School Transparency Law
Effective January 1, 2020

- Makes express law that charter schools must comply with Public Records Act, Brown Act, Political Reform Act, and Government Code 1090.
- Laws applicable to charter schools and entities managing/operating charter schools.

YM&C
YOUNG, MINNEY & CORR, LLP

3

Education Code 47604.1



Location for charter school board meetings:

Single charter school and multiple charter school in the same county; shall meet within the boundaries of the county in which the charter school(s) are located.

One nonclassroom-based charter school that does not have a facility or operates one or more resource centers shall meet within the boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside.



YOUNG, MINNEY & CORR, LLP

4

4

Education Code 47604.1



Board that manages two or more charter schools that are not located in the same county shall meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools reside. These boards shall audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's internet website.

Boards operating school(s) with more than a single site or resource center shall establish a two-way teleconference location at each school site and each resource center.



YOUNG, MINNEY & CORR, LLP

5

5

Education Code 47604.1



- Allows an employee of a charter school to be on the charter school board as long as they *abstain from voting on or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.*
- *Still concerned about having employees on the Board....*



YOUNG, MINNEY & CORR, LLP

6

6

Understanding the Brown Act

Understanding the Brown Act


YM&C
YOUNG, MINNEY & CORR, LLP

7

Purpose of The Brown Act

What Is the Purpose of the Brown Act?

- To Foster Broad Public Access




"... The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

YM&C
YOUNG, MINNEY & CORR, LLP

8

Meetings



Brown Act Applies to Meetings of the Board

- Basic Definition
 - When any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of charter school business

YM&C
YOUNG, MINNEY & CORR, LLP

9

Meetings



Board Committees

Nearly all committees must comply with the Brown Act

Exception:

A committee that is:

- Advisory (not decision making);
- Composed of only Board members;
- Less than a quorum of the Board; and
- Must not be a standing committee.


10



YOUNG, MINNEY & CORR, LLP


10

Meetings



- A majority of the Board can attend:
 - Other body's public meeting
 - Public conferences of general interest
 - Purely social or ceremonial gatherings
- So long as charter school business is not discussed


11



YOUNG, MINNEY & CORR, LLP


11

Meetings




Serial Meetings

- Serial Meetings Are Prohibited
 - Majority of Board members
 - Engaging in a series of communications
 - Outside Board meeting
 - Through direct communications or intermediaries or technology
 - To discuss, deliberate, or take action on any item of business (including relaying comments or position of other Board members)



12




YOUNG, MINNEY & CORR, LLP

12


Meetings

directorship, he
 stewardship, he
integrity
 noun 1. adheren
 principles; sou



Serial Meetings


- Examples: Hub or Chain
- Technology may result in meetings at times you might not expect
 - E-mails
 - Text messages
 - Social media
 - Website postings
 - Online forums
 - Telephone calls
 - Faxes


13

YOUNG, MINNEY & CORR, LLP

13


Meetings



Serial Meetings

- Limit on One-Way Communications


While an employee or official may engage in separate conversations or communications with other members of the Board in order to answer questions or provide information regarding a matter of Charter School business, that person may not communicate to members of the Board the comments or position of any other member or members of the Board.


14

YOUNG, MINNEY & CORR, LLP

14

Meetings




Teleconference meetings

Six additional requirements:

1. Agenda must be posted at all teleconference locations.
2. Each teleconference location must be identified in the notice and agenda of the meeting.





15

YOUNG, MINNEY & CORR, LLP

15


Meetings



Teleconference Meetings

3. All votes taken must be by roll call.
4. Each teleconference location must be accessible to the public. (ADA-compliance required.)
5. Members of the public must be able to hear and must have the right to address the Board directly from each teleconference location.
6. A quorum of the Board must participate from within the county in which the Charter School is located.


16



YOUNG, MINNEY & CORR, LLP

16


Governor's Executive Order



A charter school board may hold teleconference meetings without adhering to all of the requirements of the Brown Act. Executive Order N-29-20 allows the following flexibility in teleconference meetings:

- The agenda does not need to provide notice of each teleconference location nor do agendas need to be posted at each location;
- A quorum of board members need not be located in the Charter School jurisdiction; and
- Governing board members may participate in a teleconference meeting from places that are not publicly accessible.


17



YOUNG, MINNEY & CORR, LLP

17


Governor's Executive Order



The charter school board may take advantage of this additional flexibility in teleconference meetings so long as the school complies with the following:

- The public has access via internet and/or telephone to the Board meeting and can provide public comment in some electronic form.
- The charter school uses its sound discretion and makes reasonable efforts to adhere, as closely as possible, to the other provisions of the Brown Act in order to maximize transparency and provide public access.

18



YOUNG, MINNEY & CORR, LLP

18

Meetings

Executive Compensation

- Approval of CEO/Executive Director's compensation must occur at a **regular** (not special) meeting
- Govt. Code 54953: Prior to final action, Board must orally report a summary of the recommendation for final action, including the salary, salary schedule, and fringe benefits, during the open meeting where final action will be taken.
- Final action in open session

YOUNG, MINNEY & CORR, LLP
19

19

Notice Requirements

Notice and Agendas

General Rule: The agenda shall be posted properly in advance of a meeting and must include a brief description of items to be transacted or discussed. With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.

Contents

- Brief description = usually not more than 20 words
- How to request disability-related accommodation
- Location for inspection of docs distributed to Board

YOUNG, MINNEY & CORR, LLP
20

20

Notice Requirements

Notice and Agendas

When?

- Regular meetings – 72 hours notice
- Special meetings – 24 hours notice
- Emergency meetings – 1 hour notice (rare)


Where to Post?

- Physically at a publicly accessible location within the jurisdiction during the entire posting period
- At all teleconference locations, if any
- On the website – homepage

YOUNG, MINNEY & CORR, LLP
21

21


Notice Requirements



Govt. Code 54954.2(a)(2): "It is in the public interest to ensure that members of the public can easily and quickly find and access meeting agendas of legislative bodies ... on the Internet homepage of those certain local agencies."

- Applies to meetings on or after Jan. 1, 2019
- Prominent, direct link to agenda on homepage
- If agency uses an "integrated agenda management platform," current agenda must be at the top.
- Agenda must be (1) retrievable, downloadable, indexable, and electronically searchable; (2) platform independent and machine readable; and (3) available to the public free of charge.


22



YOUNG, MINNEY & CORR, LLP

22


Notice Requirements



Exceptions

1. Upon a determination by a majority vote of the Board that an "emergency situation" exists (54956.5)
2. Upon a determination by a 2/3 vote of the Board or a unanimous vote of those present if less than 2/3 of the members are present that:
 - There is a need to take immediate action; and
 - The need for action came to the attention of the "agency" (i.e. entire Charter School) after the agenda was posted.


23



YOUNG, MINNEY & CORR, LLP

23


Rights of the Public



Rights to enable access and participation

- Give oral testimony at meeting
 - Time limits
 - Addressing disruptive speakers
 - Virtual meetings and best practices (stay in control of your meeting!)
- Audio record and broadcast
- Limitations on conditions of public attendance
- Non-discriminatory facilities (reasonable accommodations under ADA)
- Copies of agendas and other public writings


24



YOUNG, MINNEY & CORR, LLP

24

Public Comment




- Non-agenda items: Board members cannot enter into substantive discussions or take action on a public comment about an item that is not on the agenda. A Board member can ask a clarifying question or ask that the item be placed on the next agenda.
- Agenda items: Interaction, discussion, and substantive questions are okay because there has been notice for the subject matter.

25

YM&C YOUNG, MINNEY & CORR, LLP

25

Closed Sessions



What Are the Permissible Closed Sessions?


1. Pending/anticipated litigation (conference with legal counsel)
2. Pupil discipline (Education Code)
3. Personnel (appointment, employment, evaluation, discipline, dismissal)
 - Caveat: 24-hour written notice to employee is required if Board will hear complaints and/or charges
4. Real estate negotiations
5. Labor negotiations
6. Public security

26

YM&C YOUNG, MINNEY & CORR, LLP

26

Closed Session



Requirements


- Use "Safe Harbor" agenda language (GC 54954.5)
- Prior to Closed Session:
 - Board must make a public announcement of reasons for closed session prior to closed session
 - Public must have an opportunity to comment
- After Closed Session:
 - Board must make a public report of action taken in closed session and vote or abstention of every board member
- Attendance only for necessary personnel
- Confidentiality is required

27

YM&C YOUNG, MINNEY & CORR, LLP

27


Enforcement



Complaints and Challenges

- Notice of Concern
 - Often brought by Charter Authorizer
 - Short turnaround to respond
 - Seek advice from legal counsel on response
- Notice and Demand for Cure or Cease and Desist
 - Can be brought by DA or member of the public
 - Board must cure/respond within 30 days
 - Seek advice from legal counsel on response

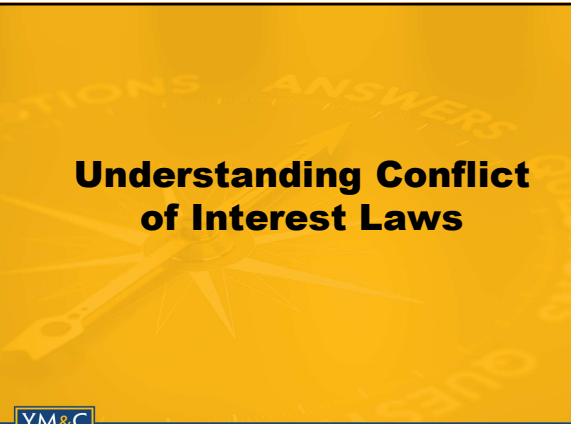
28




YOUNG, MINNEY & CORR, LLP

28

Understanding Conflict of Interest Laws




Understanding Conflict of Interest Laws



YOUNG, MINNEY & CORR, LLP

29


Conflicts of Interest



Broad Definition

- A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a corporate contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- In short, a conflict of interest is a clash between an individual's duty to his or her office and his or her personal interests.


30



YOUNG, MINNEY & CORR, LLP

30

Financial Interests




Common Types of Financial Interests Regulated by Conflict Laws

- Ownership or investment in business entity
- Investment in real property
- Source of income
- Source of gifts
- Effect on personal finances

*Financial interests of immediate family members of Board members and employees typically are covered.



31



YOUNG, MINNEY & CORR, LLP

31

Government Code Section 1090

CONTRACT


TERMS OF AGREEMENT

After the contract has been signed, the contract shall be binding on the parties. After the contract has been signed, the contract shall be binding on the parties. After the contract has been signed, the contract shall be binding on the parties.

SIGN HERE

X _____


32



YOUNG, MINNEY & CORR, LLP

32


Government Code Section 1090



What you need to know about Section 1090

- If board member has financial interest, the entire board is prohibited from entering into the contract; *even if it is with the best vendor at the best price and the interested board member abstains.* (Unless an exception applies.)
- Making a public contract is defined very broadly! Applies to earliest discussions, planning, solicitation for bids, etc., not just vote.
- Thus, this statute is, in most respects, the toughest standard to meet.
- Violation of GC 1090 is a felony and the contract void!


33



YOUNG, MINNEY & CORR, LLP

33

Government Code Section 1090




Elements

1. Public official (officer, board member, or employee)
2. Making a public contract (for sale or purchase)
3. Public official has a financial interest in the contract

YM&C 34
YOUNG, MINNEY & CORR, LLP

34

Section 1090 Exceptions



Exceptions to GC 1090


Section 1091: "Remote Interest" – Interested Board member cannot vote, but the rest of the Board can.

- Contracts with a nonprofit corporation in which official is employed
- Contracts with an individual or entity of which the official is a landlord or tenant
- Contract with entity or individual who employs the official's minor child

YM&C 35
YOUNG, MINNEY & CORR, LLP

35

Section 1090 Exceptions



Exceptions to GC 1090


Section 1091.5: "Non-interest Exceptions" – Interested Board member can participate and vote.

- The official is a spouse of an employee of a public agency, if the spouse's employment has existed for at least one year prior to the official's appointment/election
- Contract with a nonprofit entity in which the official is a non-salaried board member, officer, or employee, as long as it is disclosed immediately upon awareness

YM&C 36
YOUNG, MINNEY & CORR, LLP

36

Section 1090



The Rule of Necessity

- Government Code Section 1090 states if one Board member has a financial conflict of interest in a contract, in general, the whole Board cannot vote for that contract.
- However, in situations where the Board must vote for a contract so that the entity exists or operates, courts have found it is a **NECESSITY** to allow the Board, without the interested member, to vote.
- Example: Budgets, leases, lawsuits

YM&C 37
YOUNG, MINNEY & CORR, LLP

37

Political Reform Act



DECISIONS

YM&C 38
YOUNG, MINNEY & CORR, LLP

38

Political Reform Act



Big Picture

1. Public official
2. Participating in or attempting to influence a governmental decision
3. Public official has qualifying financial interest
(Includes spouse and children)
4. Financial interest is material


The Official Must Recuse Him or Herself from All Parts of the Decision-Making Process

* Lots of very detailed regulations have also been adopted by FPPC.

YM&C 39
YOUNG, MINNEY & CORR, LLP

39

COI Code & Form 700



Conflict of Interest Code

- States who must file the Form 700
- Assigns disclosure categories

Form 700


- Statement of Economic Interests

When it must be filed:

- Assuming or reappointment to office or position (within 30 days)
- Once annually (by April 1st)
- Leaving office or position (within 30 days)

Penalties for failure to file:

- Criminal charges by Atty General or District Atty for deliberate failure to file
- Civil or administrative action by FPPC or private citizen



40

YOUNG, MINNEY & CORR, LLP

40

Political Reform Act



“Financial Interest”


- Investment in business entity of \$2,000 or more
- Real property investment of \$2,000 or more
- Income of \$500 or more
- Business position in entity
- Gift of \$50 or more

41

YOUNG, MINNEY & CORR, LLP

41

Form 700




- Check the Conflict of Interest Code to determine what you must report (Board members: broad disclosure).
- Typically all financial interests in entities that do business in the school’s jurisdiction
 - Property: home and rental properties
 - Income from a public agency vs. private sector
 - Spouse’s income
 - Gifts

42

YOUNG, MINNEY & CORR, LLP

42

Form 700



GIFTS


- General rule is that you cannot accept more than \$500 from one source in a calendar year.
- General rule is that gifts worth more than \$50 must be reported (one gift or aggregate gifts from same source in a calendar year).
- Many exceptions to both general rules, the most common being:
 1. Special Occasions – Birthdays, Holidays:
 - Can be gifts from anyone (other than lobbyists) as long as the gift giving and taking is proportional.
 2. Inheritance

43

YOUNG, MINNEY & CORR, LLP

43

Form 700



GIFTS cont.


3. Family Members:
 - Spouse (or former spouse), child, parent, grandparent, great grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, great aunt, uncle, great uncle, niece, great niece, nephew, great nephew, first cousin, or first cousin once removed, or the spouse of any such person. (other than a lobbyist)
4. "BFF's"- Long-term friendships:
 - Friends for a "period of time" and gift giving and taking must be proportional. (other than a lobbyist)
5. Dating – "bona fide" relationship (other than a lobbyist)
 - Returning or Donating Gifts vs. Reporting

44

YOUNG, MINNEY & CORR, LLP

44

Common Law on Conflicts of Interest



Prohibition Against Conflicts of Interest

- Public official engaging in transaction or influencing decision.
- Creating an appearance of impropriety (financial interest not necessarily required)

Doctrine of Incompatible Offices

- Public official holding two public offices simultaneously
- Offices are incompatible with each other (creating divided loyalties); overlapping jurisdictions

45

YOUNG, MINNEY & CORR, LLP

45

YM&C
THE CHARTER LAW FIRM

YOUNG, MINNEY & CORR, LLP
916.646.1400 • INFO@MYCHARTERLAW.COM • WWW.MYCHARTERLAW.COM



QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY!

SACRAMENTO OFFICE:
655 UNIVERSITY AVENUE
SUITE 150
SACRAMENTO, CA 95825

LOS ANGELES OFFICE:
5200 LANKERSHIM BLVD.
SUITE 210
NORTH HOLLYWOOD, CA 91601

SAN DIEGO OFFICE:
591 CAMINO DE LA REINA
SUITE 210
SAN DIEGO, CA 92108

WALNUT CREEK OFFICE:
500 YGNACIO VALLEY ROAD
SUITE 100
WALNUT CREEK, CA 94596

46