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THE CHARTER LAW FIRM




**ABOVE THE BOARD:
Avoiding Fraud,
Misappropriation, and
Embezzlement**

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Goals for Session



1. This is a primer and will give a non-exhaustive overview of critical issues.
2. Create issue spotters!
3. Educate charter school industry on best practices to avoid fraud.
4. Limit losses and liabilities


- Disclaimers
 - Real Problems are Fact Specific & Complex
 - Cookie-Cutting can be Dangerous
 - Non-Attorney Advice and the Attorney-Client Privilege
 - Only highlighting major issues due to short time period

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Goals for Session



HEADLINE NEWS

CHARTER SCHOOL EXECUTIVE DIRECTOR
BUYS CAR AND JET SKI WITH SCHOOL FUNDS;
\$70,000 MISSING

Our goal is that this does not happen to you!

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FALSE CLAIMS

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Reporting ADA




CASE STUDY

Part I

A new student transfers to a charter school on February 1st. The student was not enrolled in any school during the month of January. The charter school claims ADA for the student for the entire semester.

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Reporting ADA



CASE STUDY

Part II

The administration at a charter school files its ADA report with the CDE. The ADA report includes some fraudulent claims. A few months later, the Board members find about the fraudulent ADA claims.

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California False Claims Act



The California False Claims Act ("CFCA"), Cal. Gov. Code § 12650 et seq. is violated by any person who does any of the following:

- (1) ". . . knowingly presents or causes to be presented to the State or any political subdivision thereof, a false claim for payment or approval . . ."
- (2) ". . . knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the State or by any political subdivision . . ."



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California False Claims Act



The CFCA is violated by any person who does any of the following:

- (3) ". . . conspires to defraud the State or any political subdivision by getting a false claim allowed or paid by the State or any political subdivision . . ." or



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California False Claims Act



The CFCA is violated by any person who does any of the following:

- (4) ". . . is a beneficiary of an inadvertent submission of a false claim to the State or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State or the political subdivision within a reasonable time after discovery thereof . . ." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1187, citing Cal. Gov. Code § 12651(a).)



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California False Claims Act



The *Wells v. One2One Learning Foundation* case found that the CFCA applies to charter schools that knowingly present false claims of attendance to a school district or the State.



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California False Claims Act



Treble Damages

Under the CFCA, false claims are serious matters. A violation gives rise to liability for three times the amount of the damages to the State or political subdivision—e.g., the CDE and School District—and for the costs of a civil action brought to recover those penalties or damages. (Cal. Gov. Code § 12651(a).) Additional civil penalties are assessed in the amount of \$5,500 to \$11,000 for each violation. (*Id.*)



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California False Claims Act



Reduction of Treble Damages

However, liability may be reduced to two times the amount of damages if the charter school furnishes the State or political subdivision "with all information known" within 30 days of obtaining the information, fully cooperates with an investigation, and the charter school is not yet aware of any legal action against it. (*Id.* § 12651(b).)




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False Claims




TAKE AWAYS

- Does it seem sketchy or tricky?
- Not just “thinking outside the box,” thinking outside the law.
- Do you feel like you’ve outsmarted the law?
- Would you be okay pointing it out to your auditor?

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False Claims



How Does A Charter School Get Caught?

- A disgruntled employee notifies the charter authorizer
- An otherwise happy employee feels uncomfortable following directions
- The charter authorizer is looking for a way to revoke the charter; starts looking for violations
- An auditor notices something unusual
- A parent complains to your authorizer about a related issue, and your authorizer starts doing additional digging.

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PUBLIC FUNDS

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Teacher Appreciation




CASE STUDY

The charter school has a budget surplus and high API due to efficient use of funds and the fact that the charter school teachers regularly go above and beyond the call of duty. The charter school wants to show appreciation to teachers and staff for a successful year. The charter school Board authorizes \$25 Starbucks gift cards for each teacher and a travel mug inscribed with the name of the Charter School at the cost of \$8 each for each teacher and staff member out of the budget surplus.

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Gift of Public Funds




California Constitution, art. XVI, sec. 6

Text:

“The Legislature shall have no power to . . . make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; . . .”

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Gift of Public Funds




California Constitution, art. XVI, sec. 6

The basic principle is that “there is denied to the legislature the right to make direct appropriations to individuals from general considerations of charity or gratitude, or because of some supposed moral obligation resting upon the people of the state It was because of abuses which had crept into legislation . . . that the power of the legislature was thus limited” (*Stevenson v. Colgan* (1891) 91 Ca. 649, 651.)

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Gift of Public Funds




California Constitution, art. XVI, sec. 6

- The basis test is:
 - “. . . the primary and fundament subject of inquiry is whether the money is to be used for a public or private purpose. If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift . . .” (*Patrick v. Riley* (1930) 209 Cal. 350, 367.)

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Dinner for Major Donors




CASE STUDY
 Part I

A charter school receives a lot of support from private donors. The charter school wants to use funds to take major donors out to dinner at a nice local restaurant in order to generate more donations. All donations go toward educational materials for the students.

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Dinner for Major Donors



CASE STUDY
 Part II


A charter school wants to get around the prohibition on the gift of public funds. The charter school sets up a private foundation to conduct fundraising, accept donations, and take private donors out to dinner in order to generate more donations.

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Employee Bonuses

CASE STUDY
Part III

At the end of a year, a charter school Board is proud of the teachers for achieving the highest API scores in the school district. Out of the budget surplus, the Board wants to approve \$1000 bonuses to each teacher in recognition of the excellent job performance over the past year.


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Extra Compensation

California Constitution, art. XI, sec. 10(a)

Text:


“A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.”

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Employee Bonuses

CASE STUDY
Part IV

At the beginning of a school year, the charter school teacher's employment contracts state that teachers will receive a \$1000 bonus if the school reaches an API score of 875. The charter school scores an 876 and the teachers receive a bonus under their employment contract.

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Political Activities



Limitations on Charter Schools

- *Use of public funds:* As recipients of public funds, various laws impact a charter schools' political activities.
- Employees must act as individuals and not as representatives of the school; they can discuss politics and solicit contributions for political purposes outside working hours.
- For example, they cannot use school time to urge the passage or defeat of any ballot measure or candidate, or use school equipment for the preparation or reproduction of political campaign materials.



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Political Activities



Limitations on Charter Schools

- *501(c)(3) tax-exempt status:* As 501(c)(3) tax-exempt organizations, the I.R.S. limits/restricts charter schools' political activities. In general, the IRS permits a 501(c)(3) organization to attempt to influence legislation only insofar as it is not a substantial part of its activities. Further, a 501(c)(3) is absolutely prohibited from participating in or intervening in any political campaign on behalf of/in opposition to any candidate for public office.



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Political Activities



Case Study

A bill before the State Legislature and a measure on the ballot in the next voter election each have the potential to close down a charter school. Three influential members of the charter school administration goes to the State Capitol to express opposition to the bill in the State Legislature. Meanwhile, the charter school staff make phone calls to parents urging them to vote "no" on the ballot measure in the next election.




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Political Activities




Attendance at the State Legislature

The legislative body of a local agency or a public agency may attend the Legislature or any other legislative body and present information to aid the passage of legislation it deems beneficial or prevent the passage of legislation it deems detrimental to the local agency. (California Government Code § 50023 & 53060.5.)

Must not be substantial part of activities due to 501(c)(3) status.

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Political Activities




Support/Oppose Candidates or Ballot Measures

Local agencies are prohibited from spending public funds to support or oppose ballot measures or candidates for public office. (California Government Code § 54964.)

A public agency cannot spend public funds to urge the voters to vote for or against a ballot measure, unless the expenditure is explicitly authorized by law. (*Stanton v. Mott* (1976) 17 C.3d 206.)

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Political Activities



Case Study

The Chairman of the Board at a charter school is running for office as the local Assemblyman in the California State Legislature. He regularly goes in to the charter school office on Fridays and uses the copiers to print flyers for his campaign. He also regularly enlists the help of staff members when work is slow.

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Political Activities



Criminal Misappropriation of Public Funds
California Penal Code § 424 – public officers are prohibited from misappropriating public funds. This includes using public funds and resources for the purpose of an official's political campaign. A county supervisor was convicted for using his county staff and county office equipment for his personal political campaign. (*People v. Battin* (1978) 77 Cal.App.3d 635.)



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Embezzlement



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Handling Cash



Case Study

President of a charter school handles the cashbox from the charter school carnival games fundraiser. When the charter school Vice-President asks about how much money was raised, the President answers "\$3,000." However, the Vice-President was at the event and estimates that at least \$4,000 was raised. When the Vice-President asks to see the record of tickets sold, the President says, "don't worry about it, I've got it under control. See you at the next meeting on Thursday."




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Handling Cash




Best Practices

- Have at least two people present when accepting cash at fundraisers
- Sell tickets for a set price. Keep a record of the number of tickets sold
- Have two people take the cash deposit to the bank and require a receipt from the bank reflecting the amount of the deposit

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Fiscal Controls




Best Practices

- Require two signatures on checks above an amount set by the governing board.
- Use notification features on bank account to notify officers of properly issued checks.
- Have the bank send bank statement to someone other than the person responsible for cash disbursement.
- Require preapproved purchase orders to be submitted for all checks.

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Fiscal Controls




Best Practices

- Have receipts received and tallied by someone other than persons responsible for cash disbursements
- Have bank reconciliation performed by someone other than the person responsible for cash disbursements
- Make sure internal controls apply to EVERYONE. The CEO and CFO must follow internal controls. Volunteers too.
- Establish confidential reporting system

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Credit Cards




Best Practices

- School credit card must be used for school expenses only. Employees should not charge personal expenses and then make payments back to the charter school.
- Personal credit card must be used for personal expenses. Reimbursements are not permitted when school credit cards are available. (What if retailer does not accept the school's American Express card?)
- Other suggestions?

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What can you do to avoid these situations?




Let's brainstorm!

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“An ounce of prevention is worth a pound of cure.”

QUESTIONS?



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