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December 21, 2004

TO: Steven Bruckman, Interim General Counsel

FROM: Ralph Black, Assistant General Counsel

SUBJECT: Applicability of Certain Provisions of the Government Code
Legal Opinion O 04-17

ISSUE:

You have asked whether certain provisions of the Government Code, as amended by Assembly Bill 2756 (Stats. 2004, ch. 52), are applicable to community college districts.

CONCLUSION:

In our view, Government Code sections 3540.2 and 3547.5, as amended by Assembly Bill 2756 (Stats. 2004, ch. 52), do not apply to community college districts. The basic requirements of Government Code section 53260 are applicable to community college districts, but the amendments to that section made by AB 2756 are not.

ANALYSIS:

Assembly Bill 2756 was passed by the Legislature and signed into law as an urgency measure by Governor Schwarzenegger on June 21, 2004, as Chapter 52 of the Statutes of 2004. The bill makes extensive changes to various provisions of the Education Code which are designed to ensure fiscal accountability and stability in K-12 school districts. However, the bill also amended sections 3540.2, 3547.5 and 53260 of the Government Code.

Section 80 of the Education Code makes clear that, as used in the Education Code, the term "school district" does not include community college districts. However, this definition does not apply to the Government Code. Thus, it has been suggested that references to "schools" or "school districts" in the aforementioned provisions of the Government Code may include community college districts. However, a careful reading of the statutes and a review of their legislative history leads us to the conclusion that sections 3540.2 and 3547.5 do not apply to community college districts and that section 53260 is only partially applicable. We consider each statute separately below.

Government Code section 3540.2

After the enactment of AB 2756, Government Code section 3540.2 now provides:

3540.2. (a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least 10 working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district, the county board of education, the district superintendent, the governing board of the school district, and each parent and teacher organization of the district within those 10 days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

(e) A county office of education, or a school district for which the county board of education serves as the governing board, that has a qualified or negative certification pursuant to Section 1240 of the Education Code shall allow the Superintendent at least 10 working days to review and comment on any proposed agreement or contract made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The county superintendent of schools shall provide the Superintendent with all information relevant to yield an understanding of the financial impact of that agreement or contract. The Superintendent shall notify the county superintendent of schools, and the county board of education within those 10 days if, in his or her opinion, the proposed agreement or contract would endanger the fiscal well-being of the county office.

Section 3540.2 is part of the Educational Employment Relations Act (EERA) which governs collective bargaining between "public school employers" and the exclusive representatives selected by the school employees. (Gov. Code, § 3540 et seq.) Section 3540.1 defines the term "public school employer" to include "school districts," and the agency charged with administering the EERA, the Public Employment Relations Board (PERB), has defined the term

"school district" to include "a school district of any kind or class, including any public community college district, within the state." (Cal. Code Regs., tit. 8, § 32001(c).)¹

Since section 3540.2 specifies steps which must be taken to review the fiscal impact of collective bargaining agreements between exclusive representatives and "public school employers" or "school districts," it might be presumed to apply to community college districts as well as to K-12 districts. However, we think there are sound reasons for reaching a contrary conclusion.

First, we observe that, by its own terms, section 3540.2 applies to a school district "that has a qualified or negative certification pursuant to Section 42131 of the Education Code."² Section 42131 describes a system for classifying the financial condition of a school district as either "positive," "negative" or "qualified." However, because of the definition of "school district" contained in section 80, this provision does not apply to community college districts. Thus, there would never arise a situation in which a community college district would receive a qualified or negative certification and, as a result, section 3540.2 has no application to community college districts.

Moreover, it seems clear that the Legislature never intended section 3540.2 to apply to community college districts. Section 3540.2 was first enacted by Assembly Bill 1708 (Stats. 1993, ch. 924). AB 1708 made various changes to the laws related to fiscal accountability for K-12 school districts in connection with an emergency loan to the Compton Unified School District. There is no indication in the text of AB 1708 or in analyses of the bill reviewed by the various legislative committees which considered it that the bill was intended to apply to community college districts.

There have been several minor clarifying amendments to section 3540.2 since 1993, but none made any substantive change and there is no indication that any of these amendments were intended to make it applicable to community college districts. In particular, the only change in section 3540.2 made in 2004 by enactment of Assembly Bill 2756 was to extend the time period for review of the collective bargaining agreement from six to ten days.

As AB 2756 moved through the various committees in the Legislature, the analyses repeatedly emphasized that it related to reform of fiscal accountability mechanisms for K-12 districts. For example, the analysis prepared for the hearing on April 21, 2004, of the Assembly Committee on Education states, "This bill implements the recommendations of the administration relating to fiscal monitoring of school districts and the procedures and practices that are triggered by a school district's request for an emergency loan."

¹ Because PERB is the agency responsible for interpreting and administering the EERA, we must point out that our conclusions about the meaning of sections 3540.2 and 3547.5 can only be considered advisory in nature. Only the PERB or the courts can definitively resolve this issue.

² Section 3540.2 also applies to a school district governed by a county office of education "that has a qualified or negative certification pursuant to Section 1240 of the Education Code." However, this special case does not affect our analysis.

None of the analyses of AB 2756 ever so much as mention community college districts. This is no doubt because mechanisms for fiscal monitoring of community college districts are established by Education Code section 84040 and regulations adopted by the Board of Governors which appear at sections 58310 et seq. of title 5 of the California Code of Regulations.

It is also worth noting that shortly after AB 2756 was signed into law on June 21, 2004, the Legislature passed another urgency measure, Assembly Bill 61 (Stats. 2004, ch. 139), which added section 71093 to the Education Code to clarify the authority of the Board of Governors to appoint a special trustee to govern the Compton Community College District. This would not have been necessary if the Legislature believed that AB 2756 applied to community college districts. Indeed, section 71093 authorizing the appointment of a special trustee for the Compton Community College District, uses language very similar to that appearing in Education Code section 41320.1, as amended by AB 2756, which authorizes the appointment of such trustees in the K-12 context.

Thus, we believe that Government Code section 3540.2 was never applicable to community college districts and that AB 2756 did nothing to expand the scope of that section.

Government Code section 3547.5

Section 3547.5 was originally enacted by AB 1200 (Stats. 1991, ch. 1213). At that time, the statute simply provided:

3547.5. Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

As noted above, under the EERA the term "public school employer" does include community college districts. Therefore, an argument could be made that a plain reading of this statute would make it applicable to community college districts as well as to K-12 districts. However, were this the case, it seems odd that community college districts would be required to use a format developed by the Superintendent of Public Instruction for disclosing the terms of their bargaining agreements.

Where a statute is ambiguous, the courts will look to legislative history in order to ascertain the intent of the Legislature. (*Muller v. Automobile Club of So. California* (1998) 61 Cal.App.4th 431, 440-441.) This is true even where the statute may appear clear on its face, but contains latent ambiguities. (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 924.) Here, the legislative history makes clear that the purpose of AB 1200 was to overhaul the law related to fiscal monitoring and accountability for K-12 school districts. For example, the Legislative Counsel's digest for AB 1200 describes the bill as relating to "school finance" and "school district budget review." Moreover, section 29 of the bill allocated \$1 million to the superintendent of Public Instruction for apportionment to school districts and county offices of

education to offset the state mandated costs imposed by the bill, but no funds were allocated to the Board of Governors for apportionment to community college districts for costs associated with implementation of the bill. This makes sense since, as with AB 1708 and AB 2756, there is not the slightest indication that the Legislature ever intended AB 1200 to apply to community college districts.

Accordingly, we doubt that the original version of section 3547.5 was intended to apply to community college districts. However, even if the original provisions of section 3547.5 are applicable to community colleges, it seems clear that the portions added by AB 2756 apply only to K-12 districts.

AB 2756 added new subdivisions (b) and (c) to section 3547.5 so that it now reads:

3547.5. (a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of a collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

The first reason for believing the new provisions do not apply to community college districts is that subdivision (c) provides that if a school district fails to make the budgetary adjustments identified pursuant to subdivision (b), the county superintendent of schools is required to make a qualified or negative certification of the district's fiscal condition pursuant to section 42131 of the Education Code. As we have previously seen, this scheme for categorizing the state of district finances applies only to K-12 districts.

Second, as discussed above, AB 2756 was exclusively a K-12 bill which did not involve community colleges. This point is emphasized by the message issued by Governor Schwarzenegger when he signed the bill. He stated:

"I want to thank Assembly Member Daucher for carrying, and the Legislature for promptly enacting, this Administration-sponsored bill that achieves two important objectives. First, (sic) bill builds upon the existing school district budgeting and fiscal oversight process, commonly referred to as the AB 1200 system. . . . Second, the bill improves procedures and clarifies roles for the rare instances when school district emergency loans become necessary. Overall, I believed this bill's emphasis on accountability and increased sunshining of the school financial situations will lead to improved fiscal practices and greater fiscal stability for school districts throughout California.

For these reasons, we think it unlikely that any portion of section 3547.5 applies to community college districts, but this conclusion seems beyond doubt with respect to subdivisions (b) and (c) of that section which were added by AB 2756.

Government Code section 53260:

Section 53260 provides:

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

(b)(1) Notwithstanding subdivision (a), if a local agency employer, including an administrator appointed by the Superintendent, terminates its contract of employment with its district superintendent of schools that local agency employer may not provide a cash or noncash settlement to its superintendent in an amount greater than the superintendent's monthly salary multiplied by zero to six if the local agency employer believes, and subsequently confirms, pursuant to an independent audit, that the superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. The amount of the cash settlement described in this paragraph shall be determined by an administrative law judge after a hearing.

(2) This subdivision applies only to a contract for employment negotiated on or after the effective date of the act that added this subdivision.

(c) The cash settlement formula described in subdivisions (a) and (b) are maximum ceiling (sic) on the amounts that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

The portions of this statute now appearing as subdivisions (a) and (c) were added to the Government Code by Senate Bill 1996 (Stats. 1992, ch. 962). They impose limitations on the amount a "local agency" can pay as a cash settlement when the agency terminates an employment contract with an employee.

Section 53260 is part of article 3.5 of chapter 2 of part 1 of division 2 of title 5 of the Government Code. Section 53263, which was also added by SB 1996 along with the rest of article 3.5, provides

"For purpose of this article 'local agency' means any general law county, general law city, and any district, school district, community college district, municipal or public corporation, political subdivision or public agency of the state, or any instrumentality of any one or more of these agencies."

Thus, it is evident that subdivisions (a) and (c) of section 53260 do apply to community college districts.

However, subdivision (b) relates only to a local agency which terminates a contract of employment with "its district superintendent of schools." Since section 53263 distinguishes between school districts and community college districts, the use of the phrase "district superintendent of schools" gives rise to the presumption that this provision does not apply to community college districts.

This conclusion is reinforced when we note that subdivision (b) was added by AB 2756.³ Since we have shown that AB 2756 was intended to apply only to K-12 districts, the more restrictive limits on settlement agreements imposed by that subdivision would not apply to community college districts.

Thus, we hold that subdivisions (a) and (c) of section 53260 do apply to community college districts, but the provisions of subdivision (b) added by AB 2756 do not.

RB:sj

cc: Robert Turnage, Vice Chancellor, Fiscal Policy

³ After the passage of AB 2756, AB 2525 (Stats. 2004, ch. 896) made a minor technical amendment to section 53260(b)(1) to clarify that an administrative law judge must conduct the hearing on the contract settlement.