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To: Steve Bruckman
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Subject: State Laws and Preemption Over City Charters
Legal Opinion 12-01

Question

Whether Education Code section 72024(b) preempts San Francisco's City Charter regarding compensation of Board members.

Conclusion

There is no conflict between Education Code section 72024(b) and the San Francisco City Charter. As a result, there is no issue of preemption between the two laws and the San Francisco Community College District is required to abide by both the state and local ordinance.

Background

Education Code section 72024 sets forth compensation guidelines for members of community college district boards. Education Code section 72024(b) requires that members of the board who do not attend all the meetings be entitled to only a pro rata share of their entitled full compensation. Education Code section 72024(b) states:

Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

San Francisco Community College District (District) exists within the boundaries of San Francisco City. That city is known as a "charter city." A charter city is a city in which the governing system is defined by the city's own charter documents rather than by general state laws. Article 11 of

the California Constitution provides the overall guidelines for how charter cities operate and are formed within our state. There are currently over 80 charter cities in California.

According to the San Francisco City Charter, members of the District's board are to be paid \$500 a month. The Charter states:

SEC. 8.101. GOVERNING BOARD OF THE COMMUNITY COLLEGE DISTRICT.

The Community College District shall be under the control and management of a Governing Board composed of seven members who shall be elected by the voters of the Community College District. A student representative shall serve on the Governing Board in accordance with state law. No member of this Board shall be eligible to serve on the Board of Education. The compensation for each member shall be \$500 per month. The terms of office in effect for Board members on the date this Charter is adopted shall continue.

The District contends that the city charter is in conflict with the state statute and therefore does not have to reduce their board member compensation based on attendance as stated in Education Code section 72024(b).

Analysis

The first step in any analysis of preemption is determining whether there is any conflict between the state law and the local ordinance. If no conflict exists between the two, then no further preemption analysis would be necessary. In order to determine if there is a conflict, courts will look at whether the local ordinance contradicts state law or whether that ordinance cannot be reconciled with state law. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893.) It is from this analysis that courts determine that a local ordinance is "inimical" to the statute. A local ordinance that prohibits what a statute authorizes, or authorizes what the statute prohibits, is inimical to the statute. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139.

In situations where it is not clear whether a conflict exists between a state statute and local ordinance, the courts have used the following test. "A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Sherwin-Williams, supra.*)

1. Does the San Francisco City Charter duplicate Education Code section 72024(b)?

No, the San Francisco City Charter does not duplicate Education Code section 72024(b). Education Code section 72024(b) requires that compensation for board members that are unable to attend all meetings be reduced by a pro rata portion. The San Francisco City Charter specifies that the compensation for each member of the board "shall be \$500 per month." These two sections do not duplicate each other. It should be noted that Education Code section 72024(a) does set guidelines for board member compensation that is based on the FTES

generated by the District. The San Francisco City Charter falls within the parameters set forth in that Education Code.

2. Does the San Francisco City Charter contradict Education Code section 72024(b)?

No, the San Francisco City Charter does not contradict Education Code section 72024(b). The San Francisco City Charter and Education Code section 72024(b) are not mutually exclusive to one another and can exist simultaneously. The board members can have their compensation set at \$500 a month as well as having it reduced by a pro rata share based on attendance at meetings. A contradiction would exist only if both laws required the monthly compensation to be set at different amounts or if the San Francisco City Charter specifically required that the compensation for board members could not be reduced for any reason.

3. Does the San Francisco City Charter enter an area fully occupied by general law, either expressly or by legislative implication?

No, the San Francisco City Charter does not enter an area fully occupied by general law, either expressly or by legislative implication. General law does not stipulate a specific amount for board member compensation. The amount set by the charter exists within the limits set forth in Education Code section 72024(a) and does not enter into an area fully occupied by general law.

Thus, based on the court's three pronged test, there is no conflict between the San Francisco City Charter and Education Code section 72024(b). As there is no conflict between the two laws, no preemption analysis is necessary. As a result, the District is required to abide by the compensation requirements set forth by both the Education Code and the San Francisco City Charter.

JL/fr/ll