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December 22, 2016

**PRIVILEGED AND CONFIDENTIAL**

Mary Sieu, Ph.D., Superintendent  
Christopher Apodaca, Board President  
ABC Unified School District  
16700 Norwalk Boulevard  
Cerritos, CA 90703

**Re: Summary of Potential Incompatible Offices and Activities of Board Member**

Dear Mary and Chris:

This correspondence is in response to your request that we provide you with a brief summary of our recent opinion letter, of December 12, 2016, concerning the new employment of ABC Unified School District ("ABCUSD") Governing Board member, Lynda Johnson. This letter will first provide a summary of the facts surrounding Ms. Johnson's new employment and a general overview of the relevant laws at play, but will omit a full discussion of such statutes and relevant case law and Attorney General Opinions. We will then summarize our analysis and conclusions on this matter, without delving into the amount of detail previously provided.<sup>1</sup>

**BACKGROUND**

Ms. Johnson recently accepted a position as Field Deputy to the newly elected Los Angeles County Supervisor for District 4, Janice Hahn. The geographic boundaries of District 4 and the ABCUSD overlap significantly, and Ms. Johnson has informed us that her assigned territory will include the cities of Artesia, Cerritos, Hawaiian Gardens, and Lakewood, which are served in whole or in part by the ABCUSD. Ms. Johnson has indicated that her job duties as Field Deputy will include meeting with elected officials, city managers, captains of the local sheriffs' and fire departments, and other similar individuals within her assigned territory, and reporting back to Ms. Hahn any issues that are brought to her attention. Ms. Johnson has also specifically informed us that the County Supervisor's office presents a proclamation to the outgoing ABCUSD Board President once per year, in which case she plans to have her assistant present the proclamation in

<sup>1</sup> As we mentioned in our initial correspondence, if any of the facts are not as we describe them here, or if anything comes to your attention that has changed since the initial opinion letter and our recent discussions, please advise us so that we can determine whether such facts would change the outcome of this analysis.

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her place.<sup>2</sup> For any other presentations not involving the ABCUSD, Ms. Johnson has stated that she will attend the events as the Supervisor's Deputy, and not as an ABCUSD Board member.

We previously examined two separate "incompatibility" statutes with respect to Ms. Johnson's new employment: Government Code sections 1099 and 1126.<sup>3 4</sup> Section 1099 prohibits a public officer from holding incompatible "offices," and provides that a public officer is deemed to have forfeited his or her current office upon the assumption of a second, incompatible, office. Significantly, Section 1099 only applies to "offices," and the California Supreme Court and Attorney General have articulated certain criteria for determining whether a position is an "office" for purposes of the statute, including, most importantly, that the position is created by the Constitution or some statute, and the incumbent exercises part of the sovereignty of the state.<sup>5</sup>

Section 1126 on the other hand, contains a prohibition that is not limited to dual office holding. It prohibits both local agency officers and employees from engaging "in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is appointed." By its own terms, activities will only be considered incompatible under Section 1126 if they are performed for compensation, not on a voluntary basis. The statute provides several examples of what may constitute incompatible activities, such as utilizing the local agency's time, facilities, or prestige for private gain, or performing an act that may later be directly or indirectly subject to the "control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed." (Gov. Code § 1126(b).) These examples are not dispositive, however, and the essence of Section 1126, like Section 1099, is to prevent public officials (and employees in the case of Section 1126) from engaging in activities that would test their loyalties to the local agency which they serve and inhibit the performance of their responsibilities thereto.<sup>6</sup> Unlike Section 1099, which explicitly provides that assumption of an incompatible office forfeits the first, the Attorney General has ruled that, at least in situations where there is not a continuous or pervasive incompatibility, abstention on a transactional basis may be enough to cure an incompatible activities issue under that provision.

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<sup>2</sup> It is our understanding that the decision whether to grant a proclamation would be at Ms. Hahn's discretion at direction, not Ms. Johnson's.

<sup>3</sup> All further statutory references are to the Government Code unless otherwise specified.

<sup>4</sup> Sections 1099 and 1126 have explicitly been made applicable to school board members by Education Code section 35233.

<sup>5</sup> See *People ex rel. Chapman v. Rapsey* (1940) 16 Cal.2d 636, 640; see also 68 Ops. Cal. Atty. Gen. 337, 342.

<sup>6</sup> As discussed in our initial opinion letter, the provisions of Section 1126 are self-executing with respect to school board members, meaning that board members are obligated, without the guidance of a specific statement of incompatible activities promulgated by the school district, not to engage in outside activities that would be incompatible with their board membership.



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### LEGAL ANALYSIS

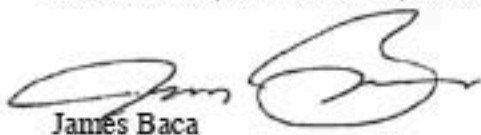
Section 1099 is inapplicable under the circumstances presented with respect to Ms. Johnson, as her Field Deputy position is an employment and not a "public office." The prohibition against engaging in incompatible activities contained in Section 1126, however, is of concern under these facts, given the significant geographic overlap with District 4 and the ABCUSD, and Ms. Johnson's acknowledgment regarding the presentation of annual proclamations. Notably, had Ms. Johnson proposed to run for the office of County Supervisor itself, that proposal would constitute an incompatible *office*. However, given that the position of Field Deputy is an employment, and that Ms. Johnson has not indicated that she will be participating in decision-making functions of the Board of Supervisors, we believe that there is at least a potential for Ms. Johnson to carry out the duties of her new employment while refraining from having any involvement with the ABCUSD, or matters directly affecting the ABCUSD. However, this will need to be re-examined as the duties of the Field Deputy position are more fully realized. This necessity of complete abstention from performing duties required by the Field Deputy position that would impact or entail involvement with the District (including interactions at any level, whether with individual school sites and employees, or with senior officials and/or the ABCUSD Board itself) is due to the fact that in any dealings with the ABCUSD, it is unlikely that a court or the Attorney General would find that Ms. Johnson could effectively serve the interests of both the ABCUSD and her new employer simultaneously.

### CONCLUSION

Accordingly, it is our opinion that in order to prevent the possibility of incompatible activities under Section 1126, Ms. Johnson will need to refrain from having any interaction whatsoever with the ABCUSD, or matters directly affecting the ABCUSD, as she executes the job functions of her Field Deputy position. As such, Ms. Johnson will need to perform a careful evaluation of the requirements of the Field Deputy position as it is more fully developed, and if the responsibilities of such position ultimately would require continuing or pervasive interaction with the ABCUSD, such that she would be unable to completely refrain from performing those duties as we recommend, then it is our opinion that the employment would be prohibited.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



James Baca

JB:sbr