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BY: _____

October 19, 2016

2015-2016 Santa Barbara County Grand Jury
Attn: Maria Millsaps, Foreperson
County Courthouse
1100 Anacapa Street
Santa Barbara, CA 93101

RE: June 29, 2016 Grand Jury Report,
"Lompoc Unified School District, Problems on the Board"

Dear Ms. Millsaps,

The Santa Barbara County District Attorney's Office received the Grand Jury's report, "Lompoc Unified School District, Problems on the Board," dated June 29, 2016 (hereinafter referred to as "Report"). Although the Grand Jury did not request a formal response from the District Attorney, because you complained that a member of the Lompoc Unified School District Board may have violated criminal laws, I am hereby responding to your complaint.

The Report alleges that Bill Christen, a board member of the Lompoc Unified School District Board, may have violated California Conflict of Interest Laws (Government Code § 1090, et seq.) because Mr. Christen voted twice to increase the salaries of management and confidential employees who were members of the Association of Lompoc School Administrators ("ALSA"). These votes are allegedly problematic because Mr. Christen's spouse is the District's Director of Special Education and a member of the ALSA.

The Report acknowledges one exemption to the prohibition of making a contract in which a public officer has a financial interest. Government Code § 1091.5 provides that an officer is not financially interested in a contract if his or her spouse's employment with the public agency has existed for at least one year prior to the officer's election or appointment. The Grand Jury correctly noted that this exception did not apply to Mr. Christen and his votes to increase the ALSA members' salaries, as he was elected to the Board in December 2012, five months after his spouse was hired as Special Education Director. The Report's analysis ends here and defers to the District Attorney to determine whether any criminal conduct occurred. As will be explained in more detail below, there are other potentially applicable exceptions to a section 1090 conflict of interest, as well as other statutes which may apply.

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In general, Section 1090 prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.)

Mr. Christen is a public officer subject to the provisions of Section 1090. His spouse’s employment contract constitutes a contract for purposes of Section 1090, and he has a financial interest in his spouse’s source of income. Consequently, Mr. Christen has a financial interest in his spouse’s employment contract unless an exception applies.

As discussed above, because Mr. Christen spouse’s employment did not exist for at least one year prior to his election or appointment to the Lompoc Unified School District Board the exception in Section 1091.5(a)(6) does not apply. However, other exceptions may apply. The California Attorney General has opined that a school district board member may participate in the making of a contract involving his or her spouse’s employment so long as it involves a contract that affects the salary and benefits of a *class of employees* that includes the spouse. (See 69 Ops.Cal.Atty.Gen.102, at pp. 107-108 (1986).) The board member may not, however, participate in the making of contracts involving unique benefits to the spouse, such as decisions to promote, reclassify, or hire the spouse. (See *Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655, 665; 69 Ops.Cal.Atty.Gen. 255, 259-260 (1986).) Moreover, Education Code Section 35107(e), which applies specifically to boards of education, allows a board member to vote on personnel matters affecting a relative provided the decision impacts a class of employees and does not have a unique effect on the relative.

Here, the contracts in question involved salary increases for ALSA members. The ALSA is a group of approximately 39 school administrators, including the Director of Special Education. While ALSA is not a recognized bargaining unit, it is a “meet and confer” unit with the District on compensation and benefits. There does not appear to be a legal distinction between a recognized bargaining unit and a meet and confer unit in this context, and thus the ALSA would be considered a class of employees that the school board’s decisions impact.

Based on the above, it appears that although Mr. Christen had a financial interest in salary adjustments for ALSA members, his votes on these adjustments were for a class of employees and not solely his relative. As a result, there is no evidence of criminal wrongdoing.

Board members are required to follow many complex laws and regulations in their roles as trustees and officials. The Lompoc Unified School District Board Members should regularly consult their legal counsel and, when necessary, the California Fair Political Practices

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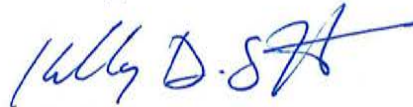
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Commission when they are unsure about conflicts of interest provisions. It is also my understanding that Mr. Christen will be reimbursing the Lompoc Unified School District for his spouse's pay increases which the Grand Jury recommended in "Recommendation 1a."

Please contact me if you have any further questions concerning this matter.

Sincerely,



Kelly D. Scott
Chief Deputy District Attorney

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