

LEGAL FRAMEWORK FOR COUNTY BOARD AND SUPERINTENDENT ROLES AND RESPONSIBILITIES

September 12, 2014

CCBE Fall Conference

Presented by:

The logo for Girard & Edwards features a large, stylized blue ampersand (&) on the left. To its right, the word "GIRARD" is written in a dark red serif font. Below "GIRARD", the word "EDWARDS" is written in the same dark red serif font. A thin horizontal line is positioned between "EDWARDS" and the text "ATTORNEYS AT LAW".

ATTORNEYS AT LAW

GENERAL AUTHORITY

- County boards of education are created by statute. (Ed. Code § 1000)
- County superintendents are established pursuant to the California Constitution and are considered “county officers”. (Cal. Const. Art. IX § 3, Gov. Code § 24000)
- County board and county superintendent duties and responsibilities are established by statute.
 - There are some 20 Ed. Code sections specifically dealing with county board duties.
 - There are some 150 Ed. Code sections specifically dealing with county superintendent duties.
- “Shall” is mandatory; “may” is permissive. (Ed. Code § 75)

LESS THAN A MODEL OF CLARITY

“In this case, we confront the formidable task of making sense out of the California Education Code.”

First sentence of the opinion, *Woodland Joint Unified School District v. Commission on Professional Competence*, 2 Cal.App.4th 1429 (1992).

BROAD AUTHORITY, BUT WITH LIMITATIONS

- County superintendents *and* county boards are authorized to initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which county superintendents or county boards were established. (Ed. Code §§ 35160, 35160.1, 35160.2)
- Legislature recognized need to have flexibility to create unique solutions in addressing diverse needs of individual communities and programs.

OVERVIEW OF COUNTY BOARD DUTIES

- Adopt the budget of the county superintendent of schools.
- Serve as an appellate body for student expulsions and interdistrict transfers.
- Establish and oversee county charter schools.
- Review interim financial reports and the annual audit.
- Fix the salary of the county superintendent.
- Hold public hearing and adopt Local Control Accountability Plans (LCAPs).

OVERVIEW OF COUNTY SUPERINTENDENT DUTIES

- Superintend the schools of the county.
- Employ certificated and classified staff.
- Provide fiscal oversight of each school district within the county.
- Visit schools.
- Conduct *Williams* visits and report on the outcome.
- Enforce the course of study.
- Monitor implementation of Quality Education Investment Act (QEIA).
- Develop LCAP for schools and programs operated by county office.

COUNTY OFFICE BUDGET

- County boards of education are *required* to:
 - Approve the annual budget of the county superintendent of schools. (Ed. Code § 1040(c))
 - Approve the annual county school service fund budget of the county superintendent of schools. (Ed. Code § 1040(d))
 - Adopt an annual budget for the budget year and file that budget with the State Superintendent of Public Instruction before July 1. (Ed. Code § 1622(e))
 - File a revised budget on or before September 8 each year following a public hearing. (Ed. Code § 1622(c)).
- Different process for several non-fiscally independent counties.

COUNTY OFFICE BUDGET

- Failure to file the county office of education budget has significant consequences.
 - CDE shall not make any apportionment of state or federal money for the fiscal year.
 - CDE shall notify the appropriate county official to not approve any warrants issued by the county office of education.

(Ed. Code § 42120)

COUNTY OFFICE BUDGET

- After the budget is adopted by the board, and submitted to CDE for approval, the county superintendent is responsible for administration of the budget.
- Any revision in the county superintendent's budget in excess of \$25,000 (or consultant contract for \$25,000 or more) must be incorporated in the next interim financial report, or other board report, when that report is submitted to the county board, and must be on the agenda for discussion and approval. (Ed. Code §§ 1280, 1281)

COUNTY OFFICE BUDGET

- County superintendents may:
 - Spend within budget categories without further approval
 - Make necessary transfers between budget categories to meet necessary expenses. To what extent?
- County superintendents may not transfer budget funds from the unappropriated fund balance without approval of the county board.

COUNTY OFFICE BUDGET

- County boards are *permitted* to :
 - Review the county superintendent's "annual itemized estimate of revenue and expenditures" before it is filed with the auditor and make revisions, reductions, or additions as the county board deems advisable and proper. (Ed. Code § 1042(b))
- County superintendents may not file the annual itemized estimate until it has first been reviewed and approved by the county board. (Ed. Code § 1042(b))

COUNTY OFFICE BUDGET

- The county board is *required* to review 2 interim financial reports submitted by the county superintendent. (Ed. Code § 1240)

LEASE/PURCHASE OF REAL PROPERTY

- “Real Property”: legally defined subset of land and improvements made to it (i.e., buildings).
- As long as functions and duties have been transferred to the county board by the county board of supervisors, county boards *may*:
 - Enter into agreements for the acquisition of real property or improvements. (Ed. Code § 1082)
 - *In the name of the county board*, acquire, lease, lease-purchase, hold and convey real property for the purpose of housing the offices and services of the county superintendent of schools. (Ed. Code § 1042(c))
 - This includes power to acquire property by eminent domain. (Ed. Code § 1047)

PURCHASE OF PERSONAL PROPERTY

- “Personal property”: movable property (e.g., furniture, equipment, materials, vehicles).
- County superintendent *may* enter into contracts and make purchases of personal property.
- Title to *all property* purchased by county superintendent from county school service fund is held in the name of the office of the county superintendent.(Ed. Code § 1605)
 - Does this imply that county superintendent can purchase real property or only personal property?
- Note: County superintendent may, with county board approval, transfer or sell the *real* and *personal* property of any emergency school maintained by the county superintendent. (Ed. Code § 1923)

EXPENSES OF COUNTY SUPERINTENDENT'S OFFICE

- Expenses of the office of county superintendent of schools, including, but not limited, to housing *shall* be allowed and paid out of the general fund. (Ed. Code §§ 1202, 1203)
 - Does this imply the county superintendent could purchase property for housing?
 - With or without board approval?

DISPOSAL OF PERSONAL PROPERTY

- County superintendents are *required* to take the following steps to dispose of any item of personal property worth over \$25,000:
 - Obtain an independent valuation;
 - Advertise the property for sale in a newspaper;
 - Bring the matter to the county board's attention at a regularly scheduled meeting; and
 - Obtain county board approval.
- For disposal of items less than \$25,000, certify the value of the property in a quarterly report to the county board for review.

(Ed Code § 1279)

LITIGATION AND SETTLEMENTS

- Claims for money or damages against public entities.
(Gov. Code § 900 et seq, Ed. Code § 35202)
 - Present to county board for action
- Other litigation
 - Who are the named parties?
 - County office of education?
 - County superintendent?
 - County board of education?
 - Individual capacity or official capacity?

CONTRACTS FOR SERVICES

- County boards *may* contract with and employ any persons to provide the board with special services and advice in the following areas:
 - Finance
 - Economics
 - Accounting
 - Engineering
 - Administrative
 - Legal
 - Note: County boards may not appoint outside counsel in addition to in-house counsel to provide unrestricted, independent advice to the board. Only under special circumstances (e.g., conflict of interest, second opinion).
- Persons must be specially trained, experienced, and competent to perform the special services required.

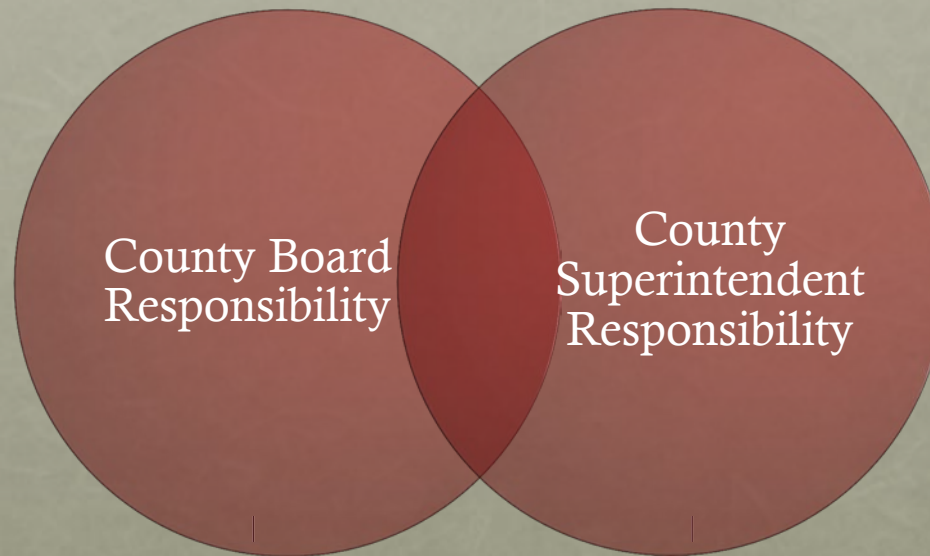
(Ed. Code § 1042)

POLICY MAKING

- County boards are *required* to adopt rules and regulations for their own government. (Ed. Code § 1040(a))
- County boards *may* adopt rules and regulations governing the administration of the office of the county superintendent of schools. (Ed. Code § 1042)
 - To what extent are county superintendents legally bound by any policies adopted by the county board?

BEST PRACTICE IN THE FACE OF AMBIGUITY

- Some areas have clear, bright line tests.
- When not as clear...cooperative efforts and joint approach to problem-solving.



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