



## *Education Law Update*

---

TEL: 661.636.4830  
FAX: 661.636.4843  
E-mail: [sls@kern.org](mailto:sls@kern.org)  
[www.schoolslegalservice.org](http://www.schoolslegalservice.org)

January 25, 2011

### **SUPERINTENDENT'S USE OF DISTRICT RESOURCES TO COMPILE A LIST OF RECALL SUPPORTERS WAS NOT A CRIMINAL VIOLATION OF THE EDUCATION CODE**

In the first published decision on the criminal implications of Education Code section 7054, the California Court of Appeal reviewed charges leveled against a superintendent for authorizing subordinates to compile two lists of individuals who supported a recall of the school board.<sup>1</sup> While the Court concluded the criminal charges were not supported under the circumstances, the case serves as a reminder that the line between informing the public about electoral issues and improperly using district funds to influence the outcome can be difficult to navigate.

In this case, the superintendent became aware of an e-mail sent to a large number of people with the subject line, "Let's show up for the Recall." No recall had been placed on the ballot at that point. It was alleged that the superintendent asked his assistant superintendent or a secretary to compile a list of the names from the addresses listed in the e-mail, and then, by accessing the student information database, indicate the names of the relevant schools attended by the children of the e-mail recipients. The actual work in compiling the list took no more than one half hour. The superintendent claimed that the purpose of the list was to analyze dissatisfaction with the location of a new high school (one of the recall issues), and to inform those on the list of the reasons for the location. There was no evidence that anything was done with the list other than maintaining it.<sup>2</sup>

Initiated by the district attorney via grand jury proceedings, charges were brought against the superintendent and a staff member based on the violation of Education Code section 7054, the Penal Code (unlawful appropriation of public moneys) and the improper accessing of pupil information. This update focuses on the violation of Section 7054.

---

<sup>1</sup> Fleming v. Orange County Superior Court (2010)

<sup>2</sup> After the failure of the recall for non-compliance with the election law, it was alleged that the superintendent authorized the creation of a second list based upon the recall petitions submitted. However, the second list was not the subject of a complaint of violation of the Education Code.]

Section 7054 prohibits the use of district funds, services, supplies or equipment "for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district."

The statute goes on to provide an important caveat: the prohibition does not apply in the case of providing information to the public about the possible effects of a bond issue or other ballot measure if the informational activities are authorized by law and the information provided constitutes a fair and impartial presentation of the relevant facts to aid the electorate in reaching an informed judgment on the matter.

The district attorney argued that public resources were used to create the list because of the use of district employee time and the district's student database. The district attorney argued that the superintendent disliked the recall because it may have threatened his job and would likely have used the list for an improper purpose. The Court found no campaign or promotional communication present in the preparation of the list of recall supporters and no attempt to persuade or influence voters. The list was not distributed to the public, and at the time it was created, no recall election had been set. The Court noted that at that stage, the audience was not the electorate, but simply potentially interested private citizens. The Court further noted that it is within the legitimate purview of a superintendent to investigate whether any discontent in a district is limited to particular schools or evenly spread throughout the district.

The Court concluded that while the actual use of a list of recall supporters as part of a political campaign opposing the recall of a school board could trigger a violation of law, in this case, the evidence did not support a violation of the statute.

Districts are urged to review similar issues with counsel, along with communications to the public relating to ballot measures and other electoral matters. For more information on this topic, see *Politicking at the Schoolhouse*, a Schools Legal Service Education Law Update dated October 11, 2010.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Grant Herndon

---

*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*