



School Business Law Update

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ATTORNEY GENERAL ISSUES OPINION ON SCHOOL DISTRICT PARTICIPATION IN TOBACCO USE PREVENTION PROGRAM EVALUATION

The California Attorney General recently issued an opinion holding that school districts are required to participate in the evaluation of effectiveness of tobacco use prevention programs in schools as a condition of receiving funds under Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (Opinion No. 04-113, February 19, 2005).

The Act and implementing statutes call for an evaluation by the Department of Health Services (DHS) of the effectiveness of tobacco use prevention education programs as implemented in the public schools receiving funding in order to target resources for those programs accomplishing maximum results. Health and Safety Code section 104375 requires school districts to agree, as a condition of receiving tobacco use prevention funding, to participate in the evaluation if chosen by the evaluator.

The funding, distributed by the California Department of Education (CDE), comes in two basic formats: entitlement allocations for programs directed at 4th – 8th grade students and competitive grants for projects directed at 9th – 12th graders.

The Attorney General concluded that districts receiving either type of funding are required to participate in the evaluation, even for locations or grades where the district has not implemented a prevention program. The opinion noted that non-participatory grades or sites can serve as statistical controls against which to measure data from participating grades and schools and may provide other important data for evaluators.

Many school districts pool these funds into consortia operated by a county superintendent of schools to provide programs. Based on the language in the Health and Safety Code and the opinion stated by the Attorney General, it is extremely likely that a District would still be obligated to participate in the DHS evaluation even if its funding is paid into a consortium, since the programs would be operated at school sites where the necessary data can be obtained.

The opinion further concludes that the CDE is required to withhold tax funds under the Act if a district refuses to participate in the program evaluations. If you need further information on this topic, contact the attorneys in our Business Practice Group, Grant Herndon, Bill Hornback and Chris Burger.

—Grant Herndon

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