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LEGAL UPDATE

August 17, 2009

To: Superintendents, Member School Districts (K-12)
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From: Marko H. Fong, Assistant General Counsel

Subject: **School Mailboxes Cannot Be Used to Distribute Partisan Political Materials**
Memo No. 23-2009

On June 18, 2009, the California Supreme Court confirmed in *San Leandro Teachers Association v. Governing Board of the San Leandro Unified School District*¹ that a school district may prohibit the use of school mailboxes by an employee union for the circulation of materials that endorse particular candidates for office.

Background:

In 2004, the San Leandro Teacher's Union ("SLTA") used faculty mailboxes to distribute a newsletter that included a list of SLTA endorsements for school board and a second newsletter that encouraged members to participate in specific campaign events for its slate of school board candidates. The District sent a letter denying use of its mailboxes for SLTA letters that included partisan political content and cited Education Code section 7054, which prohibits "the use of school funds, services, supplies, or equipment for urging support or defeat of potential candidates or ballot propositions."

SLTA responded by filing an unfair labor practice charge based in part on The Education Employment Relations Act² which provides that employee organizations "shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, **mailboxes** and other means of communication, **subject to reasonable regulation**" (bolding inserted). SLTA also argued that Education Code section 7054 did not apply because mailboxes were not a significant use of District funds, service, supplies, or equipment.

¹ (95 Cal.Rptr.3d 164, 2009)

² Government Code 3543.1 (b)

Ruling:

The Court held that faculty mailboxes were subject to Education Code section 7054 and that the District's application of Education Code section 7054 was fair and reasonable. The Court found that the mailboxes themselves were a non-public forum under the first amendment of the Constitution, and thus not subject to "open access." In addition, under the California Constitution's free speech provisions³, the teacher boxes remained a non-public forum dedicated to school business. While Government Code⁴ grants a statutory right to unions to use faculty boxes to communicate with employees, that right is not unlimited and cannot be used for partisan political purposes as defined by Education Code section 7054.

The Court's ruling limited its findings to use of employee mailboxes and did not specifically address use of e-mail, phones, and other means of communication within the district. Nevertheless, we believe that a similar decision would occur as to such forums if they remain similarly limited.

Recommendations:

Districts may limit the use of faculty boxes and other district communication resources to prohibit the distribution of partisan political materials. Unions do retain their right to use faculty boxes for communications about union matters and business. Unions and the District may still include information on elections and bond measures in district mailboxes as long as the material is balanced and informative, but should take care to stay within the provisions of Education Code⁵.

If you have a concern about whether distributed materials are sufficiently "balanced," whether district resources are being used for a partisan purpose, or about other aspects of this update, please contact any of the attorneys in our offices.

³ California Constitution Article, I, Section 2, subd. (a)

⁴ Government Code section 3543.1 (b)

⁵ Education Code section 7054 (b) permits the use of public resources to provide information about the possible effects of any bond issue or other ballot measure if the information is a fair and impartial representation of relevant facts.