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TO: Timothy M. Cary, Esq.
FROM: Marguerite Mary Leoni and Sean P. Welch
RE: Consolidation of Elections

A. QUESTION PRESENTED AND SHORT ANSWER.

You have asked whether the Board of a school district is authorized to consolidate its next elections, which are scheduled for November 2011, with the June or November 2010 statewide elections, or with the June or November 2012 statewide elections.

The California Elections Code, which expressly governs the consolidation of school board elections pursuant to Education Code sections 5300 and 5342, authorizes election consolidation only with an election that is at least one (1) month, and no more than twelve (12) months, *after* the next scheduled school district election.

Consolidation with the June or November 2010 statewide elections is not permitted by California election laws. If the Board wishes to consolidate the next election and set the district on an even-year election cycle to cut costs for elections going forward, the election must be moved to June or November 2012.

B. DISCUSSION.

1. A Board of Trustees has the authority to consolidate board elections with specified other elections.

The Education Code expressly provides that school district elections are generally to be governed by the provisions of the California Elections Code. (Educ. Code § 5300 ["School district elections and community college district

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elections shall be governed by the Elections Code, except as otherwise provided in this code”].¹

The Elections Code contains specific provisions authorizing consolidation within certain timelines and subject to certain conditions. After the initial election of governing board members in any school district, future elections may be established, upon the adoption of an appropriate resolution by the governing board, to regularly occur on the same day as the statewide direct primary election, the statewide general election, or a general municipal election occurring within the boundaries of the school district. (Elec. Code § 1302(b).) The statutory language is *permissive* and not mandatory:

Notwithstanding any other provision of law, . . . after the initial election of governing board members in any school district, community college district, or of members of a county board of education, the election of governing board members for the district or of members of the county board of education *may* be established, upon the adoption of an appropriate resolution by the governing board or the county board of education, respectively, to regularly occur on the same day as the **statewide direct primary election, the statewide general election**, or the general municipal election as set forth in Section 1301.

(*Id.* (emphasis added); see also, e.g., *Myers v. Patterson* (1987) 196 Cal.App.3d 130, 136-37 [“For purposes of the Elections Code generally, ‘Shall’ is mandatory and ‘may’ is permissive”].)

The resolution becomes operative upon approval by the county Board of Supervisors. (Elec. Code § 1302(b) [“The resolution shall become operative upon approval by the board of supervisors pursuant to Section 10404.5 or 10405.7, as applicable”].)

¹ Former section 5000.5 of the Education Code dealt with and set forth certain requirements for school board election consolidation. That section was repealed in its entirety. Former sub-section (a) was re-enacted in Elections Code section 1302(b) and former sub-sections (b) through (g) were re-enacted almost verbatim—and identical in all relevant part—in Elections Code section 10404.5 (below), which now controls.

2. Consolidation with an election occurring subsequent to the next scheduled election for board members is permitted by the Elections Code.

As outlined above, the Education Code plainly provides that school board elections shall be governed by the Elections Code and, in turn, the Elections Code includes provisions expressly governing the manner and timing of school board election consolidation. Fully consistent with this statutory framework, the Education Code also expressly provides for consolidation pursuant to *the Elections Code provisions* relating to consolidation generally:

Whenever any school district election or community college district is scheduled to be held on the same day, in the same territory, or in territory that is the same, as an election or elections called to be held by any other district, city, county, or other political subdivision, the district election may be either completely or partially consolidated with the election or elections ***pursuant to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code.***

(Educ. Code §5342 (emphasis added).)

Elections Code section 10404.5, which is located in Part 3 of Division 10 of the Elections Code, sets forth the specific statutory requirements—including *required timeframes*—for school board election consolidation requests pursuant to Elections Code section 1302(b). These timeframes provide for consolidation to an election later than the next scheduled board election, i.e. in 2012. Section 10404.5 provides in full:

(a) A resolution of the governing board of a school district or county board of education to establish an election day pursuant to subdivision (b) of Section 1302 shall be adopted and submitted to the board of supervisors not later than 240 days prior to the date of the currently scheduled election of the district or for the members of the county board of education.

(b) The final date for the submission of the resolution by the governing board of a school district or county board of education to the board of supervisors is not subject to waiver.

(c) The board of supervisors shall notify all school districts and the county board of education located in the county of the receipt of the resolution to

consolidate and shall request input from each district on the effect of consolidation.

(d) (1) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors may obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.

(e) Within 30 days after the approval of the resolution by the board of supervisors, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the school district or if applicable, the county board of education.

(f) An election day established pursuant to subdivision (b) of Section 1302 **shall be prescribed to occur not less than one month, nor more than 12 months, subsequent to the election day prescribed in Section 5000 of the Education Code or pursuant to Section 1007 of the Education Code, as appropriate.** As used in this subdivision, "12 months" means the period from the election day prescribed in Section 5000 of the Education Code or pursuant to Section 1007 of the Education Code, as appropriate, to the first Tuesday after the first Monday in the 12th month subsequent to that day, inclusive.

(g) In the event that the election day for a school district governing board or county board of education is established pursuant to subdivision (b) of Section 1302, the term of office of all then incumbent members of that governing board or county board of education **shall be extended accordingly.**

(*Id.* (emphasis added); see also Educ. Code §§ 5000 [generally establishing school board elections in odd-numbered years] and 1007 [relating to county boards and inapplicable here].)

3. Consolidation with an election occurring prior to the next scheduled election for board members is not permitted by the Elections Code.

We understand from recent articles and commentary in the Sacramento Bee and on the Sacramento Bee internet site that some are questioning whether consolidation with the November 2010 general election is permitted, and whether it was contemplated by the State Board of Education when it approved the amended unification resolution establishing the Twin Rivers Unified School District. We therefore obtained a copy of said resolution and accompanying materials from the State Board and have reviewed them.

In March 2007, the State Board of Education granted Education Code waivers² in order to “allow all the initial trustee terms to be the same and begin staggering of terms with the second election,” and amended the unification resolution as follows:

RESOLVED further, that in order to stagger the terms of the members of the governing board and provide stability for the start-up of the new district, the initial terms of the trustees shall be ***four***

² The waivers included the following revisions:

35558. (a) Notwithstanding Sections 35105 and 5000, in the case of a unified school district ~~formed in an even-numbered year~~, where in connection with the formation of which the first governing board was elected ~~in that even-numbered year~~, all of the members of the first elected governing board shall serve until the first Friday in December of the second succeeding odd-numbered year. Their successors shall be elected at an election conducted on the first Tuesday after the first Monday in November of the second succeeding odd-numbered year. ~~The majority of successors receiving the highest number of votes shall serve until the first Friday in December of the second odd-numbered year thereafter succeeding. The other members' terms shall expire on the first Friday in December of the first odd-numbered year thereafter succeeding.~~

35737. Plans and recommendations may include a provision specifying that the election for the first governing board will be held at the same time as the election on the reorganization of the school districts. If such a provision is included, it shall specify the method whereby the length of the ~~initial~~ terms may be determined so that the governing board will ultimately have staggered terms which expire in years with regular election dates. In the absence of such a provision, the election of the first governing board will take place on the first regular election following the passage of the reorganization proposal.

years, ***unless the governing board by resolution consolidates*** the election of the governing board members with the statewide general election, and then the initial terms of the trustees shall be ***three*** years. The successor trustees from the even-numbered trustee areas will have terms ending on the first Friday in December of the first odd year after their election to the board, unless the election of the board members has been consolidated with the statewide general election and then the successor trustees from the even-numbered trustee areas will have terms ending on the first Friday in December of the first even year after their election to the board. The successor trustees from the odd-numbered trustee areas will have terms ending on the first Friday in December of the second odd year after their election to the board, unless the election of the governing board members has been consolidated with the statewide general election and then the successor trustees from the odd-numbered trustee areas will have terms ending on the first Friday in December of the second even-numbered year after their election to the board.

(Emphasis added.) This language clearly provides that, absent the school board's discretionary decision to consolidate, the next regular district election after the initial election in 2007 will be November 2011. The language also appears to account for a possible consolidation with an "earlier" statewide election (i.e., from a stand-alone election in 2011 to a consolidated election in 2010). As explained above, however, the language in the amended resolution and accompanying materials appears to contemplate consolidation in a manner that is at odds with the procedures set forth in controlling state law.

By limiting election consolidations to an election that is within one to twelve months *after* the district's next regularly scheduled election (§10404.5(f)), and by providing for the extension of terms of office—but not for their contraction (§10404.5(g))—the plain statutory language of section 10404.5 does not authorize consolidation to an election that is *before* the district's next scheduled election. (See, e.g., *Citizens to Save California v. FPPC* (2006) 145 Cal.App.4th 736, 747 ["If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs"]; *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [same].)

Accordingly, although the State Board of Education resolution suggests, at the discretion of the Twin Rivers Board of Trustees, the *possibility* of consolidation with the statewide election in November 2010, such consolidation

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would be contrary to unambiguous State law controlling consolidation procedure.³ Moreover, the State Board of Education has no authority to alter or waive the operation or interpretation of the *Elections Code*. (See Educ. Code § 33050 [State Board of Education can waive *Education Code* provisions].) It is without question that an agency wholly lacks the authority to promulgate rules and regulations outside the authority it has been delegated by the Legislature. (See, e.g., *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11, fn. 4 [where an agency's interpretation is clearly erroneous or unauthorized, it is not entitled to deference and, in all cases, "[t]he court, not the agency, has final responsibility for the interpretation of the law" (internal citations omitted)].)

* * * * *

³ We also located and reviewed 18 school board election consolidation requests to Counties across the State. With a single exception, all of the requests involved consolidation to a statewide election after the district's next regularly scheduled odd-year election, as well as an extension of the terms of office of the incumbents for one year to permit the consolidation. The resolution from the sole district requesting consolidation to an earlier statewide election provided no statutory references, authority or other justification for a request that is in direct conflict with State law — unlike the numerous districts requesting consolidation with a later statewide election, which cited the specific authorizing sections of the Elections Code outlined above. (See Ex. A, attached hereto).

Exhibit A – School Election Consolidation Requests

School Board	Consolidated Election After or Before Next District Election	Authority Cited by District
1. Woodland Joint Unified School District	After	Elec. Code §§ 1302(b) and 10404.5
2. Yucaipa – Calimesa Joint Unified School District	After	Elec. Code §§ 1302(b) and 10404.5
3. Beaumont Unified School District	After	Elec. Code §§ 1302(b) and 10404.5
4. Winters Joint Unified School District	After	Elec. Code §§ 1302(b) and 10404.5
5. Davis Joint Unified School District	After	Elec. Code §§ 1302(b) and 10404.5
6. Belleview School District	After	Elec. Code §§ 1302(b) and 10404.5
7. Chinese Camp School District	After	Elec. Code §§ 1302(b) and 10404.5
8. Columbia Union School District	After	Elec. Code §§ 1302(b) and 10404.5
9. Curtis Creek School District	After	Elec. Code §§ 1302(b) and 10404.5
10. Sonora School District	After	Elec. Code §§ 1302(b) and 10404.5
11. Sonora Union High School District	After	Elec. Code §§ 1302(b) and 10404.5
12. Soulsbyville Elementary School District	After	Elec. Code §§ 1302(b) and 10404.5
13. Summerville Elementary School District	After	Elec. Code §§ 1302(b) and 10404.5
14. Tuolumne County Board of Education	After	Elec. Code §§ 1302(b) and 10404.5
15. Yolo County Board of Education	After	Elec. Code §§ 1302(b) and 10404.5
16. Twain Harte/Long Barn Union School District	After	Elec. Code §§ 1302(b) and 10404.5
17. Menifee Union School District	After	Elec. Code §§ 1302(b) and 10404.5
18. St. Helena Unified School District	Before	None provided