



Santa Clara County Office of Education

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County Superintendent of Schools

**Advisory Opinion Regarding New Compensation Disclosure Requirements
Assembly Bill 2040**

**Prepared
By**

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Introduction

Assembly Bill (“AB”) 2040, which became effective January 1, 2015, amends various provisions of the Government Code to require local agencies to disclose annual compensation of elected officials, officers, and employees as part of the financial reports that must be provided to the State Controller. AB 2040 also requires local agencies to disclose that information on their web sites.

While it is clear that AB 2040 amends the California Government Code to require cities, counties and special districts to disclose annual compensation to the State Controller, it is unclear as to whether school districts are defined as a “local agency” and thus required to disclose this information. Additionally, even if school districts are defined as a “local agency,” it is still unclear if school districts must provide annual compensation information to the State Controller and post it on the school district’s web site. However, regardless of how AB 2040 is interpreted, the compensation information for all elected officials, officers and employees of all public entities, including county offices of education and school districts must be provided pursuant to the California Public Records Act (“PRA”).

A. Neither AB 2040 Nor the Underlying Statutes it Amends Apply to County Offices of Education

County Offices of Education (“COE”) are not specifically mentioned in AB 2040 or the underlying statutes it amends. The statutes in question show the legislature knew how to (and did) single out particular types of governmental agencies when it wished to do so (specifically community redevelopment agencies). COEs also do not fall within the definition of school districts in Education Code section 80 or local agencies in Government Code section 53890 (both cross-referenced in the definitions section). Therefore, there does not appear to be any basis to interpret AB 2040 as covering COEs.

However, under Government Code section 12463.1 the State Controller could conclude that it is in the public interest to make such reports and require production of the information. As is well known, this past year the Controller requested this information. There is nothing in AB 2040 that would preclude the same request in the future.

B. AB 2040 Amendment to Government Code section 12463 Does Not Apply to School Districts

Government Code section 12463 directs the State Controller to prepare and publish financial reports of various local agencies. Specifically, AB 2040 amended Government Code section 12463(a) to include the underlined language as follows:

“(a) The Controller shall compile, publish, and make publicly available on the Controller’s Internet Web site, in a format that may be printed and downloaded, reports of the financial transactions and information on annual compensation, consistent with subdivision (l) of Section 53892, of each county, city, and special district, respectively, within this state, together with any other matter he or she deems of public interest. The reports shall include the appropriations limits and the total annual appropriations subject to limitation of the counties, cities, and special districts. The reports to the Controller shall be made in the time, form, and manner prescribed by the Controller. . .

(c) The Controller shall annually publish, on the Internet Web site of the Controller, reports of the financial transactions of each school district within this state, together with **any other matter he or she deems of public interest**. The reports shall include the appropriations limit and the total annual appropriations subject to limitation of the school district.” (emphasis added)

While the legislature amended Government Code section 12463(a) to explicitly require counties, cities, and special districts to publish and make publicly available annual compensation information consistent with Government Code section 53892(l), the legislature did not make similar amendments to Government Code section 12463(c), which applies to school districts. This presents what appears to be a deliberate intention by the Legislature to treat school districts separately and distinctly.

However, there is nothing that would preclude the State Controller from reporting such information.

Subsection “c” states in pertinent part:

(c) The Controller shall annually publish . . . reports of the financial transactions of each school district within this state, **together with any other matter he or she deems of public interest**. . . . (emphasis added).

This broad authority would authorize the State Controller to gather and publish such information.

C. AB 2040's Addition of Government Code Section 53908 Does Apply to School Districts

AB 2040 requires certain local agencies to post annual compensation information on their websites by adding Government Code section 53908 in its entirety as follows:

“(a) If a local agency, that is required to report to the Controller under Section 53891, maintains an Internet Web site, it shall post, in a conspicuous location on its Internet Web site, information on the annual compensation of its elected officials, officers, and employees that is submitted to the Controller under Section 53891.

(b) A local agency may comply with subdivision (a) by posting, in a conspicuous location on its Internet Web site, a link to the Controller’s Government Compensation in California Internet Web site.”

The plain language of Government Code section 53908 suggests that the web site posting requirement does not apply to school districts. Specifically, it states that a local agency “that is required to report to the Controller under Section 53891” must post annual compensation information on its web site. School districts do not report to the State Controller.

Instead, school districts report to the State Superintendent of Public Instruction, who then reports to the State Controller pursuant to Government Code section 53892.1. Please be aware that despite the plain reading, an argument can be made that school districts must post annual compensation on their web sites because they indirectly report to the State Controller, or in other instances may submit reports directly to the State Controller.¹

California Public Records Act

Despite the inconsistencies between various provisions of the Government Code that suggest annual compensation may not be required as part of the financial report ultimately submitted to the State Controller, all annual compensation information, including salary and benefits, must be disclosed under the California Public Records Act. (see, *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court* (2007) 42 Cal.4th 319.) Thus, even if the annual compensation information does not need to be disclosed to the State Controller pursuant to Government Code section 53890 et seq., such information is subject to disclosure pursuant to the PRA.

If you have any questions, please feel free to contact:

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¹ Examples of the type of reports that may be sent directly to the State Controller include, Interim reports that have negative or qualified certification, and AB 139 -Extraordinary Audit (when county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred).