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17112

August 25, 2011

VIA E-MAIL [DIANNE.RUSSO@SUHSD.K12.CA.US]
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Ms. Dianne Russo, Chief Financial Officer
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911

Re: Sweetwater Union High School District – Potential Application of Education Code Sections 42600 *et seq.* to Certain Funds held by Sweetwater Union High School District

Dear Dianne:

You have requested that we provide an initial letter to the Sweetwater Union High School District (“District”), relative to our views on the potential utilization by the District of provisions of Education Code Sections 42600 *et seq.* (“Act”) for temporary inter-fund transfers of funds held in certain funds and accounts held by the District subject to the limitations and requirements of the Act. This letter is provided in response to that request. Please note that pursuant to our discussions, this letter provides our initial response to this matter based upon a brief initial review. As we discussed, our office will proceed with a more thorough examination of the application of the Act to the referenced funds and accounts (described herein) with the aim of providing a more comprehensive letter to the District when such review is completed. It is our understanding that the presentation of this letter to the District in the manner discussed above is acceptable to the District.

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Ms. Dianne Russo
Sweetwater Union High School District
August 25, 2011
Page 2

Based on our discussions, we understand that the District has requested our review of the potential application of the Act to three principle funds of the District, the titles and purposes of which are briefly summarized as follows:

1. Funds of the District held for deferred maintenance purposes;
2. The District's Special Reserve Fund for capital projects; and
3. Funds of the District retaining monies from State matching fund programs or State grant programs as payments or reimbursements for District capital projects.

Please note that we have, in other correspondence, been provided with descriptions of such funds and fund purposes which we have used and relied upon in preparing this letter. Subject to our views, and other information as the District may consider, we understand that the District is considering the application of the Act to the above-referenced funds, accounts, and monies relative to meeting District cash-flow as may be applicable to the District's General Fund, subject to the provisions and limitations set forth in the Act.

Please note that within the context of this letter we have not been requested to review at this time, and have not so undertaken, the application of the Act to funds and accounts held by the District, or any community facilities districts formed by the District, which are contractually limited, restricted, allocated, or utilized for construction purposes, debt service requirements, reserve fund requirements or similar, relative to any of the District's bonds, certificates of participation, Mello-Roos financings or similar securities obligations.

Summary Reply:

Based upon our initial review of the current applicable State law with regard to the matter presented above, we are of the view that the District may, pursuant to the provisions and limitations of the Act, temporarily transfer funds from its deferred maintenance funds, Special Reserve Fund for Capital Projects, and funds retaining monies State matching fund or State grants to be used for District cash flow purposes. Further, under current State law, we note that the District may use funds received under the annual State Budget Act (defined herein) for deferred maintenance for any educational purpose.

Brief Discussion:

The District is a public school district organized and operating pursuant to the California Education Code ("Education Code") and as such, is subject to, and authorized to implement, inter-fund transfers of funds under the provisions and limitations of the Act. Education Code Sections 46200 *et. seq.* authorizes a number of methods to transfer and borrow amounts between

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Ms. Dianne Russo
Sweetwater Union High School District
August 25, 2011
Page 3

school district funds. We note that as of this time there are no published case decisions or California Attorney General Opinions interpreting the Act and its implementation.

Section 42603 of the Act, which provides for inter-fund borrowings between District funds during a fiscal year, is relevant to the discussion of the District's current fiscal considerations and the issue presented:

"The governing board of any school district may direct that moneys held in any fund or account may be temporarily transferred to another fund or account of the district for payment of obligations. The transfer shall be accounted for as temporary borrowing between funds or accounts and shall not be available for appropriation or be considered income to the borrowing fund or account. Amounts transferred shall be repaid either in the same fiscal year, or in the following fiscal year if the transfer takes place within the final 120 calendar days of a fiscal year. Borrowing shall occur only when the fund or account receiving the money will earn sufficient income, during the current fiscal year, to repay the amount transferred. No more than 75 percent of the maximum of moneys held in any fund or account during a current fiscal year may be transferred."

[Emphasis added.]

The language of Section 42603 is permissive, allowing for the transfer of moneys held in *any fund or account* to be temporarily transferred *to another fund or account of the District for payment of obligations*. Certain District funds, however, may be contractually obligated or otherwise restricted by law in a manner such that transfer under Section 46203 would potentially violate such constitutional provisions or would potentially not be in compliance with California Constitutional limitations. For instance, the use of Proposition 39 general obligation bond proceeds are restricted by Section 18(b) of Article XVI California Constitution for "the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities." The transfer of such general obligation bond proceeds for other purposes may be interpreted as contrary to applicable law under the Constitutional limitations. Further, contractual restrictions such as covenants in bond documents must be reviewed and accounted for when considering the transfer of District funds. We have not undertaken to review such potential contractual limitations which may apply to the funds referenced herein for the purposes of providing this letter.

We also note that under the temporary fund transfer method authorized by Section 42603, the District must ensure that any such transfer(s) conform with statutory requirements, including, but not limited to, repayment of the transfer within the same fiscal year, assurance that the fund to which the bond proceeds are loaned "will earn sufficient income during the current fiscal year

BOWIE, ARNESON, WILES & GIANNONE
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Ms. Dianne Russo
Sweetwater Union High School District
August 25, 2011
Page 4

to repay the amount transferred"; and that no more than 75% of the maximum of monies held in the transferring fund is transferred.

Under the standard rules of statutory interpretation, words are normally given their plain, common sense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resorting to extrinsic sources to determine the Legislature's intent is unnecessary. See Kavanaugh v. West Sonoma County Union High School District, 29 Cal. 4th 911 (2003). Further, potentially conflicting statutes must be read in the context of the entire statutory scheme, so that all provisions can be harmonized and given effect. See Voices of Wetlands v. State Water Resources Control Board, 2011 Cal. Lexis 8117 (2011). In the instant circumstances, Education Code Section 42603 expressly allows for the transfer of amounts from *any fund or account* without further elaboration or limitation. Certain statutes and regulations governing accounts of the District (i.e. a deferred maintenance account) restrict the use of funds contained therein. Giving effect to the plain meaning of Section 42603, however, harmonizes such restrictive statutes with the ability of school districts to temporarily borrow and transfer amounts between their funds. Thus, subject to the issues noted above and upon review of additional information to be provided by the District, we are of the view that under the express permissive language of Education Code Section 42603, the District may transfer amounts from its deferred maintenance funds, Special Reserve Fund, and funds retaining State matching funds or State grants, subject to the limitations noted herein, to be repaid in accordance with applicable law.

In addition to inter-fund transfers authorized under Education Code Section 42603, we note that the Act also authorizes certain types of permanent inter-fund transfers. Education Code Section 42600 provides, in part, that:

"Transfers may be made from the designated fund balance or the unappropriated fund balance to any expenditure classification or between expenditure classifications at any time by written resolution of the board of education of any school district...when filed with the county superintendent of schools and the county auditor."

Pursuant to Section 46200, a school district may transfer amounts from a designated or unappropriated fund to another fund with a different designated purpose. This process allows for a permanent transfer of funds, without the requirement of repayment, in contrast to the process discussed above regarding Education Code Section 46203.

Education Code Section 42601 authorizes school districts, at the close of a school year, to request that the applicable county make certain transfers or balance such funds as necessary for the school district to pay its obligations incurred during that school year:

"At the close of any school year a school district may, with the approval of the governing board, identify and request the county superintendent of

BOWIE, ARNESON, WILES & GIANNONE
PRIVILEGED AND CONFIDENTIAL

Ms. Dianne Russo
Sweetwater Union High School District
August 25, 2011
Page 5

schools to make the transfers between the designated fund balance or the unappropriated fund balance and any expenditure classification or classifications, or balance any expenditure classifications of the budget of the district for that school year as necessary to permit the payment of obligations of the district incurred during that school year.”

Education Code Section 42602 authorizes a school district to budget and use any unbudgeted income received during a fiscal year:

“Notwithstanding the provisions of Sections 42600 and 42610 or any provision of this code to the contrary, the governing board of any school district may, by a majority vote of its membership, and with the approval of the county superintendent of schools, budget and use any unbudgeted income provided during the fiscal year from any source.”

In addition to the transfers and borrowing discussed above, the State Budget Act for Fiscal Year 2011-12 (Statutes of 2011, Chapter 33) and specifically, related amendments to the Education Code (Statutes of 2011, Chapter 7¹) extended certain spending flexibility authority for school districts, as codified in Education Code Section 42605. Section 42605 allows school districts, through Fiscal Year 2014-15, to use funding for the programs enumerated therein for “any education purpose.” This includes, among other things, funding for certain categorical programs, programs receiving block grants, and deferred maintenance costs. Thus, under Education Code Section 42605, we are of the view that the District may (during the referenced time period) use funds received for deferred maintenance toward any educational purpose.

Please note that in providing this letter we are providing no view(s) as to the potential effect(s) that such transfers may have on the fiscal status of the District.

We express no views herein with respect to the effect of laws, other than the laws and regulations of the State of California in full force and effect on the date hereof. The views expressed herein are based on the facts (as we know, believe, or have assumed them to be) and law as in effect on the date of this letter and, as such, the views set forth herein shall be effective only as of the date of this letter. Please note that future actions, court decisions or changes in law may serve to modify, alter, or change the circumstances under which this letter was prepared and upon which the views herein were rendered. We have not undertaken to determine or to inform any person or party, whether (or not) any such actions or events occur. Our views as expressed in this letter should not be considered a guarantee of result in the event of a legal challenge in regard to this matter.

¹ Pursuant to Section 12 of Article IV of the California Constitution, this statute took effect upon approval by the State Governor on March 24, 2011.

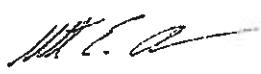
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Ms. Dianne Russo
Sweetwater Union High School District
August 25, 2011
Page 6

It is our hope that this letter will be of assistance to the District in its review and consideration of this matter. Please contact our office should you have any questions. Thank you.

Very truly yours,

BOWIE, ARNESON, WILES
& GIANNONE


By:
Robert E. Anslow

REA/LKC/ih

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