

**Application for Participation by Quasi-Governmental Agency:
The Academy of Alameda**

**LIAB Regular Meeting
May 19, 2015**

ISSUE

Is The Academy of Alameda (the "Academy") a qualified "quasi-governmental agency" eligible to invest funds in the Local Agency Investment Fund (LAIF)?

RECOMMENDATION

Staff respectfully recommends that the Academy be considered a quasi-governmental agency for purposes of investing in LAIF. On the basis of the information provided, the Academy substantially meets the factors used to determine whether an entity qualifies as a quasi-governmental agency.

BACKGROUND

The Academy is a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law, which operates charter schools as permitted under Education Code section 47604(a). The Corporation is organized and operated exclusively for educational and charitable purposes pursuant to and within the meaning of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States Internal Revenue Law.

Government Code section 16429.1(c) provides that "an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment."

Section 16429.1(g) states that the "Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund."

ANALYSIS

The LAIF staff, in consultation with the State Treasurer's Office legal counsel, use an implemented seven-factor test to assist in determining whether an entity is a quasi-governmental agency. The Academy's eligibility as a quasi-governmental agency is analyzed under this test as set forth below based on the information provided by the Academy.

1. *Does the statute, ordinance or resolution pursuant to which the Academy is formed recognize a governmental purpose?*

The Academy is a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law, which operates charter schools as permitted under Education Code section 47604(a). Pursuant to Education Code section 47601, it is the Legislature's intent to enable charter schools to operate independently from the existing school district structure, as a method to improve learning, increase opportunities for all pupils, encourage use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and pupils with expanded choices, hold charter schools accountable for meeting measurable outcomes, and provide competition within the public school system to stimulate continual improvements in all public schools.

2. *Do the net earnings of the Academy inure to any private person or are they irrevocably dedicated to a political subdivision?*

The Academy's assets are irrevocably dedicated to public benefit purposes.

3. *Did a political subdivision approve the formation, articles, bylaws, members, directors, and officers of the Academy?*

Alameda Unified School District (AUSD), which is a political subdivision of the State, granted a charter for the establishment of the Academy's charter school, and is entitled to a single representative on the board of directors of the Academy under Education Code section 47604(b). The Academy's bylaws provide that the Academy's "activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors." Although AUSD presently does not have a representative on the Academy's Board of Directors, AUSD may choose to have a representative. (Ed. Code, § 47604, subd. (b).) Nevertheless, the bylaws also provide that the bylaws cannot be amended to "change any provisions of the Charter that created The Academy of Alameda or make any provisions of [the] Bylaws inconsistent with that Charter ..." AUSD, the Academy's chartering authority, has numerous duties with respect to the Academy under section 47604.32 of the Education Code, including ensuring the Academy's compliance with required reports and monitoring the

Academy's fiscal condition. AUSD may also renew or deny charter renewal, or revoke the Academy's charter. (Ed. Code, § 47607.)

4. *Does a political subdivision approve the methods of financing or investment by the Academy?*

Although AUSD presently does not have a representative on the Academy's Board of Directors, AUSD may choose to have a representative. (Ed. Code, § 47604, subd. (b).) Also, AUSD is required to monitor the Academy's financial condition under Education Code section 47604.32.

5. *Are representatives of a political subdivision notified of meetings of directors or members and allowed to attend and make comments?*

The Academy's bylaws provide that all meetings of the Board of Directors will be held in accordance with the Ralph M. Brown Act.

6. *Does a political subdivision approve (or reserve right of disapproval) amendments to articles or bylaws and new officers and directors?*

Although AUSD presently does not have a representative on the Academy's Board of Directors, AUSD may choose to have a representative. (Ed. Code, § 47604, subd. (b).)

7. *Is the Academy recognized by other government agencies (e.g., IRS, SEC) as a political instrumentality?*

The Academy is a nonprofit formed under Internal Revenue Code section 501(c)(3). Nevertheless, the Internal Revenue Service ("IRS") considers charter schools as public schools, albeit operated under a charter. (Int.Rev. Manual, § 4.76.8.8.)

While not all of the above factors need be present to indicate that an entity is a political instrumentality, it is generally considered essential that a political subdivision have thorough provisions of law, charter documents or indentures, control over management, operations, and future amendments to charter documents or indentures. We conclude that the Academy substantially meets the factors and that the Academy may be determined to be a quasi-governmental agency that may remit money in its treasury not required for immediate need to the State Treasurer for deposit in the LAIF for the purpose of investment. **However, since the reasons for the consideration is largely based on the Academy's AUSD approved charter, the Academy should only remain eligible if and while its charter is in effect (including any renewals).**