



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 26, 2020

Daniel J. McHugh
City Attorney
Office of the City Attorney
City of Redlands
PO Box 3005
Redlands, CA 92373

Re: Your Request for Advice
Our File No. A-20-095

Dear Mr. McHugh:

This letter responds to your request for advice regarding the Political Reform Act and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the San Bernardino County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTION

Under the Act and Section 1090, may Redlands Chief of Police Chris Catren assist in preparing, signing (including his position title), and filing a ballot measure argument in favor of a proposed ordinance that would increase the rate of the City's Transactions and Use Tax?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

Yes, neither the Act nor Section 1090 would prohibit Chief Catren from taking part in preparing and executing the ballot measure argument, given that a decision by voters does not constitute a “governmental decision” for purposes of the Act, the Act does not prohibit a public official from communicating with the general public, and, in any case, no potential economic interest of Chief Catren’s is implicated. Further, the ballot measure argument does not constitute a contract so Section 1090 is not implicated. However, Chief Catren may wish to seek additional advice regarding other areas of the law not addressed in this letter, as well as his agency’s own policies, that may prohibit such conduct.

FACTS AS PRESENTED BY REQUESTER

The City Council of Redlands (City) has sponsored and placed on the ballot for the November 2020 election an ordinance for the voters’ consideration to increase the rate of the City’s Transactions and Use Tax on certain goods sold within the City. The California Elections Code authorizes the City Council to approve the filing of a ballot argument “for,” or in favor of, the ordinance, which the City Council has done. The City Mayor has been authorized to prepare and file the ballot argument in favor of the proposed ordinance with the assistance and signatures of four other members of the Redlands community. Chris Catren, a resident of the City and the City’s appointed Chief of Police, has been asked to participate in the preparation of the ballot argument in favor of the ordinance, and also to sign the ballot argument. No City funds or resources are expended or used in connection with the preparation of the ballot argument in favor of the ordinance. However, the ballot pamphlets are produced by the Registrar of Voters for the County of San Bernardino. After the election in November, San Bernardino County will send a request to Redland’s City Clerk for reimbursement of certain printing costs associated with the election, though it is unclear what those costs might be or how they will be itemized or categorized.

Chief Catren seeks advice on whether he may permissibly participate in and execute the ballot argument and, more specifically, whether he may use and include in the printed ballot argument his official title of Chief of Police for the City of Redlands when he signs the ballot argument.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on certain economic interests. (Section 87103.) These specified economic interests generally include “[a]ny source of income . . . aggregating \$500 or more in value provided to, received by, or promised to, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c).) However, the Act’s definition of income expressly excludes “salary and reimbursement for expenses and per diem received from state, local, or federal government agency....” (Section 82030(b)(2).) Thus, Chief Catren’s governmental salary received as Chief of

Police is not considered a source of income interest for purposes of the Act's conflict of interest provisions.

Nonetheless, an effect on an official's governmental salary may still be disqualifying under limited circumstances as a material and foreseeable financial effect on the official's personal finances. However, the provided facts show no connection between Chief Catren's salary or employment status and his participating in and executing the ballot measure argument. The provided facts do not indicate any other potential economic interest may be implicated by Chief Catren's involvement in the ballot measure argument. Consequently, with no interest in Section 87103 that may be impacted financially by the decisions, Chief Catren will not have a conflict of interest under the Act.

Further, a decision before voters in the form of a ballot measure is not a "governmental decision" for purposes of Section 87100 and, in any case, even with respect to governmental decisions that an official *does* have a disqualifying conflict of interest in, the Act does not prohibit a public official from communicating with the general public or the press concerning a governmental decision. (See *Ennis* Advice Letter, No. A-98-179; see also Regulation 18704(d)(4).) More specifically, as we advised in the *Rush* Advice Letter, No. I-00-216, there is nothing in the Act that prohibits a public official from signing a piece of campaign literature using their title as an elected official. Accordingly, the Act does not prohibit Chief Catren from participating in the preparation and execution of a ballot measure argument, including the use of his title.

Additionally, we note that Section 89001 prohibits certain mass mailings featuring or identifying elected officials, or which constitute campaign material. However, Chief Catren is not an elected official, and Section 89001's restriction on mass mailing of campaign material does not apply to a written argument sent to a voter in a voter information pamphlet. (Regulation 18901.1(b)(2).)

You have also inquired whether Section 1090 may prohibit Chief Catren's participation with respect to the ballot measure argument. However, Section 1090 specifically pertains to government contracts. Given that no government contract is involved here, Section 1090 is inapplicable.

Finally, you have also asked whether Chief Catren's participation in preparing and executing the ballot measure argument, including the use of his title, may result in a violation of Section 1099 or "any other law governing activities of general law city, public safety, employees, which laws are within the jurisdiction of the FPPC to interpret and enforce." However, these additional areas of the law do not fall within the FPPC's jurisdiction and, accordingly, Chief Catren may wish to seek additional advice regarding Section 1099, his agency's policies including any restrictions on incompatible activities, and other potentially applicable areas of the law prior to participating in the preparation and execution of the ballot measure argument.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read 'K Cornwall', is positioned above the typed name.

By: Kevin Cornwall
Counsel, Legal Division

KMC:aja