

March 14, 2014

Edward M. Brand, Ed.D.
Superintendent
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896

Re: Your Request for Advice – Conflict of Interest under Section 1090
Our File No. I-14-021a

Dear Mr. Brand:

This letter responds to your request for informal assistance on behalf of Jim Cartmill, a member of the Board of Trustees (the “Board”) of the Sweetwater Union High School District (the “District”), regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”),¹ Government Code Section 1090 and the common law. We are responding to your questions in two separate letters. This letter addresses your question regarding Section 1090. Advice Letter A-14-021 addresses conflict of interest under the Act.

Since you ask only general questions about potential government decisions that could pose conflict of interest issues under Section 1090, we offer only informal assistance. For purposes of Section 1090, because your request does not provide specific information regarding a government contract and your possible financial interest in the contract, we do not deem this letter to meet the requirements for showing good faith conduct to permit the requester to offer the letter into evidence in a Commission enforcement proceeding or criminal prosecution regarding Section 1090. (See Section 1097.1(c)(5).)

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.

QUESTION

Does Section 1090 prohibit Mr. Cartmill, as a Board member, from participating in the making of a lease agreement for District offices between the District and the landlord of real property located 517.5 feet from property owned and leased out by Mr. Cartmill?

CONCLUSION

The prohibitions of Section 1090 involve the making of a contract in which an official has a financial interest. There are no government contracts currently pending before the District. However, if in the future Mr. Cartmill is faced with a decision involving a lease or other contract for the office relocation, he will need to determine whether Section 1090 prohibits him, and the District, from making the contract, as described below.

FACTS

Mr. Cartmill owns a parcel of real property consisting of three commercial office suites and adjacent parking. The parcel is on the southwest corner of a commercial park located at 2411 Fenton Street, Chula Vista, CA 91914. Mr. Cartmill utilizes two of the office suites for his business, a wholly owned corporate entity (OBA “Let’s Talk Health”) which makes and sells nutritional supplements. Mr. Cartmill rents out the remaining suite to an insurance agency.

The District is considering relocating its office to a large office building located at 860 Harold Place, Chula Vista, CA 91914. The edge of the parcel containing the proposed new office is exactly 517.1 feet from the closest edge of the parcel owned by Mr. Cartmill. While it is possible that the relocation of the District office in close proximity to Mr. Cartmill’s commercial property could increase the value of Mr. Cartmill’s property, this is speculative at present, as the District has no data regarding the impact of the proposed relocation on the value of nearby commercial property. The Board will be considering the purchase of the proposed site at its March 17, 2014 meeting.

ANALYSIS

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.”² A contract that violates Section 1090 is void. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties.³

Although Section 1090 nowhere specifically defines the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as

² *People v. Honig* (1996) 48 Cal.App.4th 289, 333.

³ *Thomson v. Call*, supra.

well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain.⁴

Furthermore, Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids.⁵ Notably in relation to a public body such as the District's Board, when members of a public Board, commission or similar body have the power to execute contracts, each member is deemed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract.⁶

Thus, if a particular contract comes before the District, Mr. Cartmill will have to seek advice on whether he has a financial interest in the contract and to what extent, if any, he can participate in the making of the contract. Also, if Mr. Cartmill is financially interested in a contract before the Board, and no exception applies,⁷ the entire Board is prohibited from making the contract regardless of whether Mr. Cartmill disqualifies himself from participation in making the contract.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl

⁴ *Thomson v. Call*, *supra*, 38 Cal.3d at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).

⁵ *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft*, *supra* at p. 569.)

⁶ (*Thomson v. Call*, *supra*; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen 49 (2006).)

⁷ See "noninterest" exceptions (Section 1091.5) and "remote interest" exceptions (Section 1091.)