

November 6, 2014

Joshua Morrison. Esq.
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12800 Center Court Drive South, Suite 300
Cerritos, CA 90703

Re: Your Request for Advice
Our File No. A-14-132

Dear Mr. Morrison:

This letter responds to your request for advice on behalf of the Santa Paula Unified School District (“District”) and Governing Board Member Chris Wilson regarding the conflict of interest provisions of the Political Reform Act (the “Act”)¹ and Government Code Section 1090.

Pursuant to Section 1097.1(c)(4), we have forwarded your request to the Attorney General’s Office and the Ventura County District Attorney’s Office concerning potential issues raised under Section 1090 and we did not receive a written response from either entity.

Please note that our advice is based solely on the provisions of the Act and Section 1090. We therefore offer no opinion on the application, if any, of other conflict of interest laws such as common law conflict of interest. Finally, we are required to advise you that the following advice is not admissible in a criminal proceeding against any individual other than the requestor. (See Section 1097.1(c)(5).)

QUESTIONS

1. Under the Act, may Mr. Wilson make or participate in decisions involving proposals to develop property owned by the Santa Paula Unified School District (the “District”) located at 1208 Grant Line Road, Santa Paula, California (the “Property”)?

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.

2. Under Section 1090, may Mr. Wilson make or participate in decisions to develop the Property?

CONCLUSION

1-2. Yes. Neither the Act nor Section 1090 prevents Mr. Wilson from making decisions or participating in either decision.

FACTS

The District owns the Property, a parcel located at 1208 Grant Line Road, Santa Paula, California. The District's Property has a recorded easement owned by Mr. Wilson. The easement allows an agricultural water line to cross the Property in order to provide non-potable water from the local water company to the Ranch (at 999 Cliff Drive, Santa Paula, California) owned by Mr. Wilson. The easement is a property right that grants Mr. Wilson the ability to have a water line across the District Property. The District Property obtains its water from the same water line, and is entitled to use the water line by virtue of owning the property. The District does not provide Mr. Wilson with any compensation for use of the water line. The Ranch itself is approximately a quarter mile away from the Property.

The Property currently contains a 15.5-acre lemon grove and several structures, and is suitable for a variety of agricultural uses. It is mostly undeveloped. However, a portion of the Property is used for a school farm. The District's Governing Board is considering whether to develop the Property consistent with its use as agricultural land. The District has also proposed expanding its school farm for educational purposes. Potential projects identified by District administrative personnel include: (1) constructing two buildings to house animals; (2) adding improvements to utilities, including (potable) water, electric, and waste disposal; and (3) constructing a parking lot on the Property.

Your October 10, 2014 letter provides more details regarding the contemplated improvements. The projects under consideration include:

- Construction of three "barns" with concrete pads, which would be surrounded by fencing and covered with shade structures to additional house animals. The barns would be connected to electricity, but not to existing water or sewage;
- Installation of a water storage tank in or adjacent to the barns to store potable water for the animals;
- Installation of a small structure to store waste (including animal waste) which would then be removed from the site by truck;
- Installation of port-a-potties.
- Installation of a turnaround (a dirt area large enough for a fire truck to turn around);

- Removal of a small portion of the existing orchard to facilitate construction of the above structures;
- Contemplated future projects may include using part of the Property to grow crops, installation of a green house, and installation of a 72-space parking lot of use by a District elementary school adjacent to the Property. This parking lot, if constructed, would serve as an overflow parking lot for the elementary school campus, and for use of parents attending school events.

You do not believe the district's development plans would have any discernible impact on the easement owned by Mr. Wilson. The value of the easement is not clear, but it is worth \$2,000 or more. You also do not have any information to suggest that any of the projects under consideration on the Property will have any impact on the value of the Ranch.

You wish to know whether Mr. Wilson has a conflict of interest under the Act or under Section 1090 that would prohibit him from making or participating making decisions involving projects on the Property.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has an interest specified in Section 87103. A public official has a "financial interest" in a government decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on the public official or one or more of the public official's interests. (Section 87103; Regulation 18700(a).) The Commission has adopted a standard analysis for deciding whether an individual has a conflict of interest under Section 87100.

You indicate that Mr. Wilson is a public official who is asking whether he may make or participate in the making of governmental decisions regarding development of District property in light of the fact he owns an easement running through the Property and his ownership of a Ranch about .22 miles away from the Property.

You have identified two real property interests related to the Property development decisions : (1) Board Member Wilson's recorded easement on the Property for the sole purpose of allowing an agricultural water line to cross the Property and (2) Mr. Wilson's Ranch, which is approximately a quarter mile away from the Property.

Regulation 18706(b) provides that "A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

Your facts indicate that the proposed development to the District's Property will not affect the easement's use, its utility, or value in any way. Therefore, we find that the proposed development on the Property will have no reasonably foreseeable material financial effect on Mr. Wilson's property interest in the easement. Thus, we do not further consider the easement.

Revised Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As relevant to your facts, the financial effect will be material if the decision:

- Regulation 18705.2(a)(10): "Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest."

Your facts indicate that the proposed development of the Property would preserve its current agricultural use. The Property will continue its current day-to-day operations as a school farm and there will be no apparent effect on the character of neighborhood surrounding Board Member Wilson's Ranch. Thus, the facts do not support a finding of materiality under this test.

- Regulation 18705.2(a)(12): "Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property."

You noted that the developments to the Property including construction of buildings, improvements to utilities and the addition of a parking lot would not cause a reasonably prudent person to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the Ranch. The Property is about .22 miles away from the Ranch. Nothing suggests that the proposed development of the Property consistent with its agricultural use will affect real property values of surrounding properties at such a distance. Consequently, this standard of materiality is also not met.

Finally, please note that our advice is based on the facts presented. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) If the facts should change involving proposed developments and/or uses of the Property, our advice might be different. You should seek additional advice if the facts changed.

Accordingly, Mr. Wilson does not have a conflict of interest under the Act, and may make, or participate in making decisions involving plans to develop the district property.

Section 1090:

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.)

Virtually all board members, officers, and employees are public officials within the meaning of Section 1090. Beginning in 1986, Section 1090 became applicable to school boards under Education Code section 35233. In addition, development agreements between a city and a developer are contracts for purposes of Section 1090. (78 Ops.Cal.Atty.Gen. 230 (1995); see also 85 Ops.Cal.Atty.Gen. 34 (2002).)

Governing Board Member Wilson wishes to make and participate in decisions pertaining to development of the District's Property, and the District would like to enter into an agreement to develop the Property. Thus, the decisions in question involve a contract.

The central issue is whether the Board Member has a "financial interest" in the District's contract to develop the Property. Section 1090 does not specifically define the term "financial interest," although case law and Attorney General Opinions provide a definition that has been applied by various courts. The phrase "financially interested" as used in Government Code Section 1090 means any financial interest that might interfere with a city officer's unqualified devotion to his public duty. The interest includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits.

We find under these facts that Board Member Wilson does not have a financial interest in the District's development contract as contemplated by Section 1090 simply because he has a recorded easement in the District's Property. The facts indicate the District's contract will not affect the easement in any way nor will the Board Member receive any benefit from the contract. Thus, we conclude that Section 1090 does not apply in this context.

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

Sincerely,
Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl