

November 5, 2014

Cari Ann Potts  
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Feingold, LLP  
5425 Everglades Street  
Ventura, CA 93003

Re: Your Request for Advice  
**Our File No. A-14-181**

Dear Ms. Potts:

This letter responds to your request for advice regarding the conflict of interest provisions of Government Code section 1090.<sup>1</sup> Please note that we do not provide advice on any other conflict of interest restrictions, if applicable, outside the Political Reform Act (the “Act”)<sup>2</sup> Section 1090. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are complete and accurate. If this is not the case, then our advice could be different.

In regards to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General’s Office and the Ventura 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

Does Section 1090 prohibit the Ventura County Schools Self-Funding Authority (“VCSSFA”) from hiring the adult child of a VCSSFA Board Member?

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<sup>1</sup> All statutory references are to the Government Code, unless otherwise indicated.

<sup>2</sup> 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

No. Section 1090 does not prohibit the VCSSFA from hiring the adult child of a VCSSFA Board Member for the reasons set forth below.

## FACTS

You represent the Ventura County Schools Self-Funding Authority (“VCSSFA”), a Joint Powers Authority, whose board members are subject to California’s conflict of interest laws. The Board Members have no input with respect to hiring of VCSSFA staff as those decisions are made by the VCSSFA’s Executive Director. However, the Board does determine the compensation plans of staff.

The adult child of Board Member Cynthia Hansen is currently interviewing with the Executive Director for a staff position. Ms. Hansen’s child does not rely on her for financial support, nor does she claim her child as a dependent. However, her child does reside rent free in her home.

## ANALYSIS

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. 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.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103Cal.App.3d 191, 197.)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

We employ the following six-step analysis to determine whether, if elected, you will have a conflict of interest under Section 1090.

### **Step One: Is Board Member Hansen subject to the provisions of Section 1090?**

Section 1090 provides, in part, that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members.”

The VCSSFA is a state regulated public entity<sup>3</sup> whose Board Members are clearly subject to the provisions of Section 1090.

**Step Two: Does the decision at issue involve a contract?**

To determine whether a contract is involved in the decision, one may look to general principles of contract law (84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234 (1995)), while keeping in mind that “specific rules applicable to Sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of ‘contract.’” (*People v. Honig, supra*, at p. 351 citing *Stigall, supra*, at pp. 569, 571.)

You state that the Board Member Hansen’s adult child is seeking employment with the VCSSFA. An employment contract is at issue and this step is thus satisfied.

**Step Three: Will Board Member Hansen be making or participating in making a contract?**

According to your facts, the VCSSFA Board Members have no input with respect to the hiring decisions of VCSSFA staff. Instead, such decisions are made by the VCSSFA Executive Director. To the extent the decision involves only whether or not to hire Board Member Hansen’s child, she (and the rest of the Board) would not be participating in the decision and would thus not have any conflict of interest under Section 1090. However, to the extent this decision (or any future decision) involves the child’s compensation, the Board would have input so we turn to Step Four to determine whether the Board Member Hansen (and the Board) would have a financial interest in the employment contract.

**Step Four: Does Board Member Hansen have a financial interest in the contract?**

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig, supra*, at p. 333.) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

In 92 Ops.Cal.Atty.Gen. 19 (2009), cited in your letter, the Attorney General analyzed whether a redevelopment agency board member had a conflict of interest if the agency entered into a loan agreement with the Board Member’s adult son who resided with the Board Member but was not her dependent. In the portion of the opinion analyzing Section 1090, it was noted

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<sup>3</sup> See <http://www.vcssfa.org/News.aspx>

that, under Section 1091(b)(4), an official has a “remote interest” in the earnings of his or her minor child,<sup>4</sup> but the Section 1090 statutory scheme makes no reference to interests in an adult child. Further, the opinion stated that there was no evidence the Board Member would profit from the loan transaction. Consequently, the opinion concluded that the Board Member had no financial interest in the contract and thus had no conflict of interest under Section 1090, stating: “[a] parent is not legally compelled to support an adult child absent special circumstances not present here, such as the child’s incapacity. Conversely, an adult child has no legal duty to support a parent, unless the parent is ‘in need and unable to support himself or herself by work,’ a circumstance also not present here.” [Footnotes omitted.<sup>5</sup>]

We agree with this opinion and think its rationale applies to Board Member Hansen’s circumstances here. Under the facts considered in the opinion, the official’s son was an adult, not a dependent of the official, and, even though he lived with the official, had no apparent financial relationship with the official. The only fact that is different in the present situation is that Board Member Hansen’s child lives rent free in her home. However, this fact does not change the outcome because, like the facts in the Attorney General’s opinion, Board Member Hansen’s child is not a dependent and there is no financial relationship between the child and her. Consequently, based on these facts, we conclude that Board Member Hansen has no financial interest in her child for purposes of Section 1090 and is thus not prohibited under Section 1090 from participating in VCSSFA contracting decisions involving her child.

Given this conclusion, we do not reach the following steps of the analysis.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Jack Woodside  
Senior Counsel, Legal Division

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<sup>4</sup> Meaning that, in the case of a minor child, the board itself could vote on the loan agreement so long as the board member in question did not participate in the decision and followed other specified procedures. (See Section 1091(a).)

<sup>5</sup> The phrase “in need and unable to support himself or herself by work” is quoted from Family Code Section 4400.