



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 24, 2015

Jennifer S. Knight
Deputy City Attorney
City of National City
Office of the City Attorney
1243 National City Boulevard
National City, CA 91950-4301

Re: Your Request for Advice
Our File No. A-15-112

Dear Ms. Knight:

This letter responds to your request for advice on behalf of Councilmember Alejandra Sotelo-Solis regarding the conflict of interest provisions of the Political Reform Act (the “Act”)¹ and Section 1090. Please note that we do not advise on other conflict of interest laws such as Public Contract Code or common law conflicts of interest. We are also 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.

We have forwarded your request to the Attorney General’s Office and the San Diego County District Attorney’s Office and we did not receive a written response from either entity. (See Section 1097.1(c)(4).) 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).)

QUESTION

Does either the Act or Section 1090 prohibit a City Council member from participating in decisions regarding contracts or other matters between the city and the local school board when the city councilmember’s husband sits on the school board?

CONCLUSION

No. Because the city councilmember does not have a financial interest in the potential decisions, neither the Act nor Section 1090 prohibits his participation.

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.

FACTS

You are a Deputy City Attorney for the City of National City and you write on behalf of Councilmember Alejandra Sotelo-Solis. Councilmember Sotelo-Solis is married to an elected board member of a local school district who receives a stipend for his service on the Board. Decisions the City Council makes that may involve the District do not affect the amount of compensation that either spouse receives.

You ask generally whether Section 1090 prohibits Councilmember Sotelo-Solis from participating in contracts between the City and the District. Additionally, under the Act, you ask whether Councilmember Sotelo-Solis may participate in decisions related to approving contracts between the City and the District, land use decisions such as conditional use permits (the applicant is not the District, but the District might take a position regarding the permit), or participating in land use decisions in which the applicant is the District.

ANALYSIS

Section 1090

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) 103 Cal.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.)

The initial inquiry under Section 1090 is whether the public official has a financial interest in the contract. The question is “whether the official receives any direct or indirect benefit from the agreement.” (*Eden Township Healthcare Dist. v. Sutter Health* (2011) 202 Cal.App.4th 208.) Under your facts, the contracts do not in any way impact the stipend that her husband receives as a board member. Based on this, and no other financial interest being present, the City Council member is not prohibited under Section 1090 from participating in the contract decisions.

The Act

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the

public official's interests. (Section 87103.) Under the Act, a public official's financial interests include:

- A business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- A source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c).) Income does not include salary from a government entity. (Section 82030(b)(2).)
- A source of gifts to him or her if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- His or her personal finances, including those of the official's immediate family -- this is the "personal financial effects" rule. (Section 87103.)

You have not provided facts that suggest any of these financial interests are present. First, the Act exempts income from a governmental entity from the definition of income. Second, because the decisions at issue would not have any sort of impact on the amount of the stipend the school board members receive, the personal financial effects rule does not apply. As it is, we do not see a financial interest that the decisions might materially affect.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl