



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 5, 2015

Tom Hammond  
P.O. Box 68  
Herkon, CA 96113

Re: Your Request for Advice  
**Our File No. A-15-134**

Dear Mr. Hammond

This letter responds to your request for advice regarding the conflict of interest provisions under Section 1090.<sup>1</sup> Please 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.

Regarding 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 Lassen County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We have not received 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).)

You are a member of the Lassen County Board of Supervisors and own The Mark, a gas station located within Lassen County. For at least twenty-five years, County employees have used your gas station to fill their vehicles, including emergency vehicles, with gas. When they have finished filling their tanks, County employees will then sign a receipt. Once a month, you tally the receipts and bill the County. You have never had a contract with the County for the provision of gas and they are charged the same rate as the general public. Additionally, you do not attempt to solicit the County's business. The County accounts for about 1% of your annual gas sales.

Lassen County is a large unincorporated county with 4,720 square miles and a population of approximately 34,000 residents. The closest gas station to yours is 7 miles away in Doyle. When that station was sold in 2004, the new owners shut down all accounts thus requiring County vehicles that might have used that gas station to instead use yours. The only other gas station is 35 miles away in Susanville. Also, your gas station is the only one open 24 hours in the southern part of the County.

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

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

exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) 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.)

Although as a Supervisor for the County you are subject to the prohibitions of Section 1090, your situation does not raise the type of contractual situation normally covered by those provisions. For example, you do not have, nor are you proposing to negotiate, a contract with the County where it agrees to use your gas station and you agree to provide the gas at a certain rate. Instead, like all members of the general public, County employees make a decision to fill their tanks at your station and the County pays the posted rate. Although the individual transactions that occur at your gas station might be considered contractual in the most technical sense, they are simply not the type of contracts that Section 1090 seeks to preclude.

Even assuming we were to find such transactions to be prohibited under Section 1090, which we do not, the “rule of necessity” exception would nonetheless apply to allow County employees to continue purchasing gas at your station. In limited circumstances, the rule of necessity has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (88 Ops.Cal.Atty.Gen. 106, 110 (2005).) Under the rule of necessity, a government agency may acquire an essential service, despite the existence of a conflict, when no source other than that which triggers the contract is available; the rule “ensures that essential government functions are performed even where a conflict of interest exists.” (*Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal. App. 3d 311, 322.)

Under your facts, if County employees were unable to purchase gas at your station for their County vehicles, including emergency vehicles, they would have to travel 35 miles to reach the next available gas station located in Susanville. Having your gas station as an option, especially considering it is the only station in the County’s southern portion open 24 hours per day, allows County employees to acquire an essential service while ensuring that important government functions continue to be performed uninterrupted.

Accordingly, Section 1090 does not prohibit Lassen County employees from using your gas station to fill their County vehicles with gas.<sup>2</sup>

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<sup>2</sup> In addition to Section 1090, conflict of interest provisions in Section 87100 of the Political Reform Act (the “Act”) prohibit a public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has an interest. As applied to the facts you have provided, there is no indication that you are making, participating in making, or influencing a decision (see Regulation 18704) merely because a County official has purchased gas from your business. Accordingly, the Act’s conflict of interest provisions do not apply so long as the County official has independently decided to purchase gas from your business. However, we caution that you should not attempt to solicit additional business from the County or County officials.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Jack Woodside  
Senior Counsel, Legal Division

JW:jgl