



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 11, 2015

Sonia R. Carvalho
City Attorney, City of Claremont
Best Best & Krieger
18101 Von Kaman Avenue #1000
Irvine, CA 92612

Re: Your Request for Advice
Our File No. A-15-140

Dear Ms. Carvalho:

This letter responds to your request on behalf of Claremont Mayor Corey Calaycay for advice regarding the conflict of interest provisions under Government Code section 1090 et seq.¹ Because the Fair Political Practices Commission does not act as a finder of fact when it renders assistance (*In re Oglesby* (1975) 1 FPPC Ops. 71), this letter is based on the facts presented.

Please note that after forwarding your request to the Attorney General's Office and the Los Angeles County District Attorney's Office, 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 Section 1090 prohibit Mayor Calaycay from taking part in decisions relating to a proposed contract with the City of La Verne to provide water operation services for Claremont residents where he already receives water service from La Verne?

CONCLUSION

No. Under Section 1090, he does not have a financial interest in the contract.

FACTS

The City of Claremont receives water service from a privately owned public utility, Golden State Water Company that is regulated by the California Public Utilities Commission. Several years ago, the City began to explore the possibility of acquiring Golden State for a variety of reasons, including the fact that Golden State's water rates are significantly higher than those charged by city-owned public water systems and many residents have expressed a desire to make water conservation and sustainability a priority over Golden State's profits.

¹ All further statutory references are to the Government Code, unless otherwise indicated.

The City has prepared an Environmental Impact Report (“EIR”) for the potential acquisition. The EIR provides that if the City is successful in acquiring the water system, the City could implement one of several options for delivering water services to its customers. One alternative is for the City to contract with its neighboring City, La Verne, to provide water services to Claremont residents. La Verne provides water service to its residents through a City-owned water system. Claremont has filed an eminent domain lawsuit against Golden State. It is anticipated that the water service agreement will be presented to the city council for approval in September 2015.

Mayor Calaycay resides in a small part of Claremont that already receives water service from La Verne. He has served on the city council since April 2005 and has continuously resided in the same home since that time. He pays for water service no differently than other customers and does not receive any rate reductions or other special benefits. If La Verne and Claremont enter into the contract, Mayor Calaycay will not receive any special benefits.

According to analyses prepared by city staff, Golden State customers may end up paying rates that are higher or lower than they currently pay, depending on the ultimate price determined by the courts in the eminent domain action. Claremont’s new rates, however, are not likely to affect the rates paid by current customers of La Verne, including Mayor Calaycay.

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) 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.)

We employ the following six-step analysis to determine whether Mayor Calaycay will have a conflict of interest under Section 1090 should the city enter into the contract.

Steps One, Two, and Three: Is Mayor Calaycay subject to Section 1090 and is there a contract at issue in which the city council will participate?

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 any body or board of which they are members.” City councils and their members are plainly covered by this prohibition. (See, e.g., *Thomson, supra*, at p. 645; *City Council v. McKinley* (1978) 80 Cal.App.3d 204, 213.)

As a city councilmember, Mayor Calaycay is subject to Section 1090, there is a contract at issue and the city council, in approving the contract, will be making the contract.

Step Four: Does Mayor Calaycay 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; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) The phrase “financially interested” as used in Section 1090 means any financial interest that might interfere with a city officer’s unqualified devotion to his public duty. (*People v. Watson* (1971) 15 Cal.App.3d 28, 37-38.)

You indicate that the rates paid by Claremont customers of Golden State may increase or decrease under the proposed contract. However, it is unlikely that city residents currently receiving water services from La Verne, including Mayor Calaycay, will be affected by the contract. Thus, we conclude that under the facts you have provided, Mayor Calaycay does not have a financial interest in the contract and is not prohibited from making the contract under Section 1090.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl