



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 24, 2018

Michael J. Maurer
Attorney, City of Clayton
Best Best & Krieger LLP
300 South Grand Avenue, 25th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-18-046

Dear Mr. Maurer:

This letter responds to your request for advice on behalf of Clayton City Councilmember David Shuey regarding the conflict of interest provisions of the Political Reform Act (the "Act")¹ and Section 1090, and not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code. Also 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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

In regard 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 Contra Costa 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

Under the Act and Section 1090, does Councilmember Shuey have a disqualifying conflict of interest in City Council decisions regarding the establishment of a City park as a non-profit little league's "home fields," given that Councilmember Shuey is a Board Member for the little league?

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.

CONCLUSION

No. Under the Act, Councilmember Shuey does not have a disqualifying interest in decisions related to the project. In addition, under Section 1090, Councilmember Shuey does not have a financial interest in any contracts between the City and the little league regarding park improvements.

FACTS AS PROVIDED BY THE REQUESTOR

The Clayton Community Park (the "Park") is a public park owned by the City of Clayton that provides sports fields (baseball and soccer) and other activities for youth and adults in the community. The City contracts for community recreation services and, although that contract primarily offers various adult and youth sports programs at the adjacent shared-use school gymnasium, the contractor does use a sports field in the Park for coed adult softball leagues during three months in the spring and three months in the fall.

The Clayton Valley Little League (the "CVLL") is a 501(c)(3) non-profit that provides youth baseball programs. CVLL pays the City for its use of the Park's fields in accord with City Council-adopted facility rental fees. CVLL has presented the City Council with a preliminary concept for Park improvements, which could enhance CVLL's youth baseball program and establish the Park as CVLL's "home fields." Such improvements include installation and operation of sports field lighting, construction of batting cages, creation of additional baseball fields by skinning existing turf, additional storage areas, and new snack shacks and announcement booths.

Councilmember Shuey serves on the board of directors of CVLL (the "Board"). He does not receive any salary or any other compensation, nor does he have any other personal financial stake or risk in CVLL.

If the City Council decides to make some or all of the proposed improvements to the Park, City funds would be spent on a portion of the improvement costs and increased resultant field maintenance and operations. The City and CVLL have not discussed a formal contract at this time, and no formal contract is anticipated between the two parties related to the construction of the improvements. However, some type of contract may develop between the City and CVLL. For example, if the City allows new storage areas solely for CVLL's use and equipment storage, there may be a license agreement between the City and CVLL allowing CVLL to store equipment on site. In the event that the City enters into a contract with CVLL related to construction or use of any improvements, Councilmember Shuey would receive no financial benefit or detriment from the contract.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Specific to the provided facts, the Act's conflict of interest provisions only apply to conflicts of interests based on the following:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103; Regulation 18702.5.) An official always has an interest in his or her personal finances.

In this case, the provided facts indicate that Councilmember Shuey does not receive salary or any other compensation for his position on CVLL's Board. Additionally, Section 82005 defines a "business entity" as "any organization or enterprise operated for a profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association." CVLL is a nonprofit organization, and does not qualify as a "business entity" under Section 87103(d). Therefore, Councilmember Shuey does not have a financial interest in the City's decisions regarding Park improvements and his position on CVLL's Board does not create a conflict of interest under the Act.

Section 1090

Generally, Section 1090 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.² Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies.³ The term "financially interested" contained in Government Code section 1090 has been defined as follows:

"The phrase 'financially interested' as used in Government Code section 1090 means any financial interest which might interfere with a city officer's unqualified devotion to his public duty. The interest may be direct or indirect. It includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the city officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer's relationship to the individual or business firm at the time the contract is entered into, is in a position

² *Thomson v. Call* (1985) 38 Cal.3d 633, 646.

³ *Stigall v. Taft* (1962) 58 Cal.2d 565, 569.

to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual or business firm has received.”⁴

In addition, Section 1091.5(a) states that an officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

“(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.”⁵

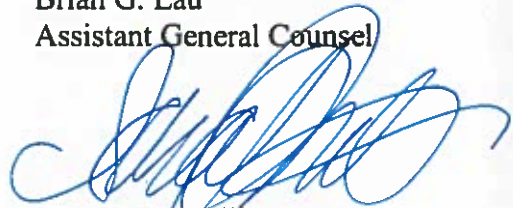
In this case, the CVLL’s primary purpose is to provide a community wide youth baseball program, which supports the function of the community’s recreational programs. Under Section 1091.5(a), Councilmember Shuey, an uncompensated officer of the CVLL, does not have an interest in any City contract with CVLL.

Accordingly, Councilmember Shuey does not have a financial interest under the Act or for purposes of Section 1090 in a contract between the City and CVLL related to Park improvements.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Sara K. Puricelli
Counsel, Legal Division

SKP:jgl

⁴ 88 Ops.Cal.Atty.Gen. 32, 36.

⁵ For purposes of this paragraph, an officer is “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.