



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 27, 2020

Rubin E. Cruse, Jr.,
County Counsel
County of Shasta
1450 Court Street, Suite 332
Redding, California 96001-1675

Re: Your Request for Advice
Our File No. A-20-069

Dear Mr. Cruse:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, 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.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Shasta 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

Do the conflict of interest provisions under Section 1090 prohibit the Shasta County Board of Supervisors from voting to award Employee of the Month to Supervisor Steve Morgan's spouse, Pamelyn Morgan, where the Board approves a resolution to that effect and provides specified gifts?

CONCLUSION

No. The Board of Supervisors may vote on and approve a resolution recognizing Ms. Morgan as Employee of the Month as provided by Chapter 36 of the Shasta County Personnel Rules because there is no contract formed for purposes of Section 1090.

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

FACTS AS PRESENTED BY REQUESTER

As County Counsel for the County of Shasta, you seek advice on behalf of the Shasta County Board of Supervisors with respect to Section 1090. Supervisor Steve Morgan was elected to his current seat in 2016, with his term commencing January of 2017. Pamelyn Morgan, the spouse of Supervisor Morgan, is a Legal Process Clerk II employed in the Shasta County Public Defender's Office. Ms. Morgan was hired as a Legal Process Clerk I in 2004. She was promoted to a Legal Process Clerk II in 2006 and has remained in that position to the present day.

Chapter 36 of the Shasta County Personnel Rules establishes the County's Employee Recognition Program. The Employee Recognition Program provides that the Shasta County Director of Support Services may select a County employee for recognition by the Board of Supervisors as Employee of the Month at a regularly scheduled Board meeting. In recognizing a person as Employee of the Month, the Board of Supervisors votes on and approves a resolution to that effect.

Pursuant to Shasta County Personnel Rule 36.7, an employee recognized by the Board of Supervisors during the year 2020 receives the following benefits: 1) a framed certificate of recognition; 2) the taking of the employee's photograph and its display outside the Board of Supervisors' Chambers; 3) a "Shasta County" Rosewood pen; and 4) \$150 in gift certificates donated by private groups and individuals.

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.) When an officer with a proscribed financial interest is a member of the governing body of a public entity, the prohibition of Section 1090 also extends to the entire body, and it applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

The determinative issue in this matter is whether the Board's decision and resolution recognizing a County employee as Employee of the Month involves a contract. We conclude that it does not. 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).) For example, the Attorney General has set forth the mode of analysis for this question in the context of development agreements:

“A contract is an agreement to do or not to do a certain thing.” (Civ. Code, § 1549.) “It is essential to a contract that there should be: 1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and, 4. A sufficient cause or consideration.” (Civ.Code, § 1550.) A development agreement contemplates that both the city or county and the developer will agree to do or not to do certain things. Both parties will mutually consent to terms and conditions allowable under the law. Both will receive consideration. The developer will essentially receive the local agency's assurance that he can complete the project. The local agency in turn will reap the benefit of the development, with all the conditions it might legitimately require, such as streets, parks, and other public improvements or facilities.

(78 Ops.Cal.Atty.Gen. 230, *supra*, at p. 234.)

In the present case, Chapter 36 of the Shasta County Personnel Rules establishes an Employee Recognition Program where the Board of Supervisors recognizes an employee selected as Employee of the Month at its regular meeting by voting and approving a resolution to that effect. As part of the program, the employee receives a framed certificate of recognition, his or her photograph displayed outside the Board of the Supervisors' Chambers, a “Shasta County” Rosewood pen and \$150 in gift certificates.

Unlike the situation involving a development agreement, there is no mutual consent here between two parties to any terms or conditions where both sides will receive consideration. Instead, there is an award offered by one party with no bargained for exchange, and there is no consideration provided by the employee to receive the award. Simply put, there is no contract within the meaning of Section 1090 where the Board of Supervisors recognizes the past performance of an employee with a nominal award through the County's existing employee incentive program.²

Accordingly, the Board of Supervisors may vote on and approve a resolution recognizing Ms. Morgan as Employee of the Month as provided by Chapter 36 of the Shasta County Personnel Rules.

² We note that a donation by a city council to a nonprofit chamber of commerce was found to be a contract within the meaning of Section 1090 (89 Ops.Cal.Atty.Gen. 258 (2006)), and grants are generally considered contracts for Section 1090 purposes (see *People v. Honig, supra*, at pp. 349-53.) However, in our view, there is a significant difference between a donation or grant to a chamber of commerce or other nonprofit and the employee incentive program at issue in this matter.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja