



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 6, 2020

Suzanne Jones
Supervisor-Elect for District 4
Placer County Board of Supervisors
4851 Waterbury Way
Granite Bay, CA 95746

Re: Your Request for Advice
Our File No. A-20-096

Dear Ms. Jones:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹

Please note that we do not advise on any other area of law, including the Public Contract Code or common law conflicts of interest. 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 Placer 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).)

The Commission does not provide advice regarding past conduct (Section 1097.1(c)(2); Regulation 18329(b)(6)(A)), nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter only apply to prospective actions.

QUESTIONS

(1) Does the Act prohibit you, Placer County Supervisor-elect Suzanne Jones, from taking part in governmental decisions relating to the County’s hiring of your district aide given that your adult brother is a candidate for that position?

¹ The 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 (the “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.

(2) Does Section 1090 prohibit you from making or participating in the making of, or the Placer County Board of Supervisors from entering into, the potential contract between the County and your brother governing his employment as your district aide?

CONCLUSIONS

(1) No. The Act does not prohibit you from taking part in decisions relating to the County's hiring of your district aide because the facts presented provide no indication that you are financially interested in those decisions despite your adult brother being a candidate for the position.

(2) No. Section 1090 does not prohibit you from making or participating in the making of, or the Board of Supervisors from entering into, the potential contract between the County and your brother because you do not have a financial interest in that contract based on the facts presented.

We caution, however, that laws outside the Act may apply including, but not limited to, common law conflicts of interest. We encourage you to review with the Placer County Counsel regarding whether that body of laws, any other laws outside of the Commission's purview, or any internal policies of the County may apply.

FACTS AS PRESENTED BY REQUESTER

You were elected the Placer County Supervisor for District 4 in the March 3, 2020, election and will take office on January 4, 2021. The County hires a district aide for each supervisor on an independent contractor basis for a one-year term that is renewable from year to year. The position of district aide is unique in that the contractor filling the position is selected and supervised by the individual supervisor for whom the contractor is hired to assist. A district aide is also subject to the County Executive Officer's administrative supervision and control. The contract between the County and the contractor selected to be the district aide, which sets forth the terms of employment, must be approved by the Board of Supervisors. Under the contract, the district aide is ineligible for bonuses or competitive raises but may receive a predetermined salary increase if the parties renew the contract.

To date, you have received applications for the district aide position and interviewed candidates for the position including your adult brother. You state that your brother has proven to be the best qualified candidate for the position, and you have expressed interest in selecting your brother to be your district aide. You note that you would prefer your brother to be your district aide because you work well together, he has performed well as your campaign manager in previous elections, and he has all the qualities and skills necessary to excel in the position.

You state that you do not have any financial interests associated with your brother. You provided additional information on September 3, 2020. Your brother would contract with the County as an individual, not as a representative, consultant, employee, or contractor of a business entity. You and your brother do not share ownership of any business entity or real property. You do not receive income from your brother. And neither you nor your brother has a legal duty to support each other or any other shared family member.

ANALYSIS

The Act

Section 87100 of the Act prohibits a public official from making, participating in making, or in any way attempting to use official position to influence a governmental decision if the official knows or has reason to know that he or she has a financial interest in that decision. Section 87103 identifies an official's financial interests that may give rise to a disqualifying conflict of interest under the Act, including an interest in:

- Any business entity in which the official has an investment worth \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, trustee, employee, or holds any position of management (Section 87103(d)).
- Any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- Any source of income of \$500 or more in value to the official in the 12 months prior to when the decision is made. (Section 87103(c).)
- Any source of a gift or gifts of \$500 or more in value to the official in the 12 months prior to when the decision is made. (Section 87103(e); Regulation 18940(c).)
- The official's personal finances and those of immediate family members. (Section 87103.)

At issue is whether you have one or more financial interests identified in Section 87103 with respect to decisions relating to the hiring of your district aide due to your adult brother being a candidate for the position.

You state that you do not have any financial interests associated with your brother. Your brother would contract with the County for the district aide position as an individual, not as a representative, consultant, employee, or contractor of a business entity. You and your brother do not share ownership of any business entity or real property. You do not receive income from your brother. And neither you nor your brother has a legal duty to support each other or any other shared family member.

The facts presented provide no indication that the decisions at issue would have any financial effect on your personal finances or those of immediate family members,² or on a source of a gift or gifts to you.

Therefore, you are not financially interested in decisions relating to the hiring of your district aide under Section 87103 based on the facts presented. Accordingly, the Act does not prohibit you from taking part in those decisions.

² Although Section 87103 provides that an official has an interest in his or her personal finances and those of "immediate family," Section 82029 defines "immediate family" to include a spouse or dependent children, but not an adult brother. Thus, you do not have a financial interest in your adult brother's personal finances under the Act.

Section 1090

Section 1090 provides that county officers, among others, “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.” This prohibition applies regardless of whether the terms of the contract at issue are fair and equitable to all parties.³ Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent an officer from exercising absolute loyalty and undivided allegiance in furthering the best interests of the officer’s agency.⁴ A conflicted officer may not avoid the application of Section 1090 by abstaining from participating in the body’s decision-making process.⁵

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.⁶ Similarly, “financial interest” is liberally interpreted and courts look to whether the officer had “the opportunity to, and did, influence execution directly or indirectly to promote his personal interests.”⁷

Past Attorney General Opinions and a previous Advice Letter have concluded that, absent a financial relationship between adult relatives (such as a legal obligation to support an adult child, a parent’s incapacity, or a shared ownership interest), an officer does not have a financial interest under Section 1090 when the contract involves the officer’s adult relative.⁸

A seminal Attorney General Opinion considering circumstances relevant to those at issue here determined that a family relationship between a county supervisor and his adult brother did not result in a violation of Section 1090. (28 Ops.Cal.Atty.Gen. 168 (1956).) Although the supervisor leased a building to the brother, and the brother sold automobiles to the county, neither brother had a proprietary interest in the financial attainments of the other, and neither was entitled to any contribution or support from the other. (*Id.* at p. 168-169.) The opinion concluded that “relations by blood or marriage who have no reciprocal rights to property or support are [citation] business strangers.” (*Id.* at p. 169.)

Like the county supervisor and his adult brother at issue in that Attorney General Opinion, you and your adult brother have neither a proprietary interest in one another’s financial attainments nor reciprocal rights to property, contribution, or support. Based on the facts presented, there is no

³ *Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.

⁴ *Stigall v. Taft* (1962) 58 Cal.2d 565, 569.

⁵ *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 211-212.

⁶ *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).

⁷ *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.

⁸ 92 Ops.Cal.Atty.Gen. 19 (2009); and citing 28 Ops.Cal.Atty.Gen. 168 (1956); *Schroeter* Advice Letter, No. A-18-141.

financial relationship between you and your brother. Therefore, you do not have a financial interest in the potential contract between the County and your brother governing his employment as your district aide for purposes of Section 1090. Accordingly, Section 1090 does not prohibit you from making or participating in the making of, or the Placer County Board of Supervisors from entering into, that contract.

Thus, neither the Act nor Section 1090 prohibit you from taking part in decisions relating to the hiring of your district aide or the potential contract governing your adult brother's employment. We caution, however, that a family relationship may require recusal under common law conflicts of interest and encourage you to review with the Placer County Counsel regarding whether that body of laws or any other outside of the Commission's purview may apply.⁹

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

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

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⁹ See 92 Ops.Cal.Atty.Gen. 19, *supra*, for a discussion of the common law doctrine against conflicts of interest where there may be a temptation to act for personal or private reasons rather than in the public interest.