



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Cardenas, Hatch and Hayward

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Advice Letter Report and Commission Review

Date: October 7, 2019

The following advice letters have been issued since the July Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. Full copies of FPPC Advice Letters, including those listed below, are available at: <http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Campaign

Thomas Krouse

[A-19-172](#)

The Act does not prohibit payment of late filing penalties imposed upon a candidate controlled committee for elective state office with a candidate's personal funds. In fact, the Act imposes joint and several liability under Section 91006, when two or more persons are liable for any violation of the Act, thus the committee and the candidate are both liable for late filing penalties. Therefore, if the late filing penalties are paid from personal funds, the funds do not need to first be deposited into the committee accounts.

Conflict of Interest

Heather L. Stroud

[A-19-135](#)

City decisions related to the relocation of a portion of interstate will have a reasonably foreseeable and material financial effect on the city councilmember's real property interest where his three rental units and vacant lot are located within 500 feet of a neighborhood, which will be demolished and replaced with the rerouted portion. Moreover, the foreseeable effect on the councilmember's interests is unique to him, due to his multiple real property interests, and not shared by the general public.

Molly S. Strump

[A-19-159](#)

The Act's conflict of interest provisions do not prohibit a mayor or councilmember from taking part in decisions relating to projects to separate city streets, which cross the rail corridor tracks, from the grade of the tracks because it is not reasonably foreseeable that those decisions will have a material financial effect on either the mayor's or councilmember's financial interests at issue, which are more than 1,000 feet from the project site. However, if the current decisions would reopen previous city decisions regarding the projects, from which the mayor and

councilmember were previously disqualified, the Act would prohibit the mayor and councilmember from taking part in the current decisions.

Robert W. Schultz

[A-19-185](#)

It is reasonably foreseeable that councilmembers' respective interests in residential houses, designated as historical by the city, will be materially affected from decisions regarding the adoption of a Mills Act Program that may result in a decrease in taxes on the properties. Accordingly, the councilmembers are generally disqualified from taking part in the decisions. A councilmember with a residence within 250 from an historic property, is also generally disqualified from taking part in the decisions. However, given that a quorum of financially disinterested councilmembers cannot be convened, the city may invoke the "legally required participation" exception to establish a quorum through a random selection process.

Marc Zafferano

[A-19-171](#)

A vice mayor could not take part in decisions related to a proposed mixed-use development project replacing an existing shopping center with 425 condominium units, a grocery store, and commercial space. As described, the project may have a reasonably foreseeable and material financial effect on the vice mayor's real property economic interests located more than 500 feet but less than 1,000 feet from the project, specifically including a possible change in market value and income-producing potential of the properties.

Mark Ross

[A-19-183](#)

A councilmember is not disqualified from taking part in a decision regarding a use permit, which would allow a sporting goods store to operate a shooting range in its basement. The possibility of a sporting goods store operating a shooting range would not have a reasonably foreseeable and material financial effect on any of the economic interests identified including a family real estate business, which is a source of income to the official, a rental property between 500 and 1,000 feet from the decision, and other properties more than 1,000 feet from the decision.

Gift Limits

Cedrick L. Hicks, Sr.

[A-19-142](#)

Because the university is located within the city and will likely come before the city council for multiple purposes, an academic scholarship awarded to an official's child is potentially a gift to the official. However, to the extent that the scholarship was awarded through a bona fide competition, the payment will not be a gift so long as the official reports the payment as income. Accordingly, the official will have a potentially disqualifying interest in the university as a source of income, which may result from disqualification from decisions with a foreseeable and material effect on the university. Nonetheless, it is not reasonably foreseeable that the decision to limit or eliminate passport services offered by the City will have a material financial effect on the official's interest in the university, and the official may take part in this decision.

Section 1090

Ruthann G. Ziegler

[A-19-046](#)

Under Section 1090, a councilmember, who is also an employee of a nonprofit, may not participate in the making of future agreements between the nonprofit and city. However, Section 1090 does not prohibit the city from entering into future agreements with the nonprofit if the councilmember recuses herself from the decision because the councilmember, as an employee of a nonprofit, has a remote interest in the decision under Section 1091(b)(1). Additionally, the councilmember may take part in future agreements between the city and other applicants for grant funds so long as the decisions are segmented and will not reopen decisions related to the councilmember's nonprofit employer. The councilmember may also take part in a final vote to adopt or reflect the city's budget under Regulation 18706(c).

Jeff L. Grubbe

[A-19-120](#)

Under Section 1090, a board member of a joint power authority ("JPA") may not participate in the purchase and sale of a JPA-owned parcel to a tribe in which the board member has a financial interest. The JPA may act on this decision, despite the financial interest of its board member, under the "rule of necessity." No other entity has the authority to make this decision, and the decision is within the essential functions of the JPA. Moreover, the abstention requirements under the rule of necessity satisfy the Act's conflict of interest recusal provisions.

Lynn Tracy Nerland

[A-19-066\(a\)](#)

Previous advice issued, *Nerland* Advice Letter, No. A-19-066, found that Section 1090 prohibits a city councilmember from obtaining a loan through a first-time homebuyer program established by the city with the participation of the councilmember. This letter was issued solely to correct a factual misstatement that the city's general manager was the executive director of the nonprofit that would administer the program. This incorrect statement does not affect the previous analysis or conclusion.

Barry Jodatian

[A-19-099](#)

Section 1090 does not prohibit a university from contracting with an architect firm to perform architectural design services related to design of a new science building where the firm had previously provided a feasibility study for an academic building, but the project has changed significantly since the firm's feasibility study. Based upon the facts provided, the firm did not engage in any planning, preliminary discussions or negotiations with the university regarding the new project site, and it did not impose considerable influence over the university regarding the new contract.

David Nam

[A-19-170](#)

Section 1090 does not prohibit city from entering a contract for project management services with a consultant where the consultant previously provided services under a separate contract on the same project. Under the first contract, the consultant assisted the city in finding a technology services vendor to install a complex new technology system for the city and to convert data from the previous system into the new one. The city initially contemplated having the consultant perform project management services as part of the first contract but decided to wait in order to

have a better idea of the level of those services necessary. The consultant was not able to, and did not, affect the level of project management services required in the subsequent proposed contract through its performance of services in the initial contract.

Hilda Cantu Montoy

A-19-198

Section 1090 does not prohibit a city from entering a contract with a nonprofit, despite the fact that a councilmember is an uncompensated board member of the nonprofit. Under Section 1091.5(a)(8), the councilmember has a noninterest in the nonprofit, which has a primary purpose supporting a function of the city, and may take part in the decision so long as his interest is noted in the city's official records.