



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 18, 2018

Bruce D. Goldstein, Esq.
Sonoma County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

Re: Your Request for Advice
Our File No. A-18-056

Dear Mr. Goldstein:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (“Act”)¹ and Section 1090² on behalf of Sonoma County Supervisor Lynda Hopkins. Please note that we are only providing advice under the conflict of interest provisions of the Act and Section 1090 and not under other general conflict of interest prohibitions such as the common law.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); 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.

Regarding 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 Sonoma 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

Does Supervisor Lynda Hopkins have a conflict of interest under the Act and Section 1090 in participating in Sonoma County Agricultural and Open Space District (“Board”) funding decisions involving her spouse’s future employer, LandPaths?

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.

² Government Code Sections 1090 through 1097.5.

CONCLUSION

Yes, Section 1090 prohibits Supervisor Hopkins from participating in decisions involving Landpaths. However, the remote interest set forth in Section 1091(b)(1) ultimately allows the Board to make the funding decisions relating to the nonprofit corporation. Additionally, we note that Supervisor Hopkins must leave the room during the consideration of the contract pursuant to the Act's recusal requirements.

FACTS AS PROVIDED BY REQUESTOR

Supervisor Lynda Hopkins is an elected representative of the Sonoma County Board of Supervisors. All members of the Board of Supervisors also serve as the Board of Directors for the Sonoma County Agricultural and Open Space District ("Board"). The District is a public entity supported by sales tax revenue with a focus on protecting agricultural, natural resource, and scenic open space lands for Sonoma County.

As part of that focus, the District works with LandPaths, an Internal Revenue Code 501(c)(3) nonprofit corporation. Landpaths' mission is to encourage community engagement with public lands and to provide stewardship support. Landpaths has an annual budget of approximately \$1.7 million. Approximately \$225,000 of that budget derives from grant funds provided by the District.

Supervisor Hopkins' husband was offered a paid position with Landpaths as a volunteer coordinator that could develop into other management responsibilities.

ANALYSIS

Section 1090:

Section 1090 codifies the common law prohibition against "self-dealing" with respect to governmental contracts. Section 1090 generally 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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.)

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.) Generally, a member of a board or commission always has a financial interest in his or her spouse's source of income for purposes of Section 1090. (78 Ops.Cal.Atty.Gen 230, 235 (1995).)³ When the Section 1090

³ An official has an interest in the community and separate property income of his or her spouse. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655; 89 Ops.Cal.Atty.Gen. 69 (2006).) Thus, a member of a board or commission is always financially interested in his or her spouse's source of income for purposes of Section 1090. This is true even if the husband and wife have an agreement that their own earnings are to be treated as separate property, since each spouse is liable for the necessities of life for the other. (*Reece v. Alcoholic Bev. Etc. Appeals Bd.* (1976) 64 Cal.App.3d 675, 683.)

prohibition is applicable, the prohibition acts as an absolute bar to a board entering into the prohibited contract. (*Thomson, supra* at p. 633.)

The Legislature, however, has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a remote interest is present, the contract may be made by the agency provided: (1) the officer discloses his or her financial interest in the contract to the public body; (2) the interest is noted in the body's official records, and; (3) the officer abstains from participating in the making of the contract. (See 84 Ops.Cal.Atty.Gen 158, 159 (2001).)

Officer or Employee of a Nonprofit Corporation or 501(c)(3) Entity.

Section 1091(b)(1) provides that an officer or employee of a nonprofit corporation or Internal Revenue Code Section 501(c)(3) entity has a remote interest in the contracts, purchases, and sales of that nonprofit entity. Such a contract might involve the provision of services or the making of a grant to the nonprofit. (85 Ops.Cal.Atty.Gen. 176 (2002).) Here, the Supervisor's financial interest meets the test of a remote interest as set forth in Section 1091(b)(1). (See *Glover* Advice Letter, No. A-14-138 [finding remote interest exception in Section 1091(b)(1) extends to school board member whose spouse is employed by a nonprofit corporation that contracts with the official's school district].) Accordingly, grants by the Board to the nonprofit corporation may be made as long as Supervisor Hopkins discloses her interest as required and recuses herself from any participation in the contract.

The Act:

In addition to Section 1090, the conflict of interest provisions in Section 87100 of the Political Reform Act prohibit a public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has an interest. As applied to the facts you have provided, the decisions at issue implicate Supervisor Hopkins' potentially disqualifying financial interests in her personal finances and Landpaths as a source of income. However, by following the abstention requirements of Section 1090 and additionally leaving the room during the decisions, Supervisor Hopkins will satisfy the Act's recusal provisions set forth in Section 87105 and Regulation 18707. As such, we do not analyze the Act's conflict of interest provisions further.

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

Sincerely,

Brian G. Lau
Acting General Counsel


By: Ryan P. O'Connor
Counsel, Legal Division