



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 18, 2020

Renee Stadel
Assistant City Attorney
City of Los Angeles
City Hall East
200 N. Main Street Room 700
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. A-20-120

Dear Ms. Stadel:

This letter responds to your request for advice on behalf of City of Los Angeles City Councilmember John Lee 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 Los Angeles 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 Section 1090 prohibit Councilmember Lee from making or participating in making, or the City from entering into or extending, a contract with a potential City contractor, such as the information technology solutions and services company 3Di, if the Councilmember's spouse becomes an employee, agent, or subcontractor of that contractor?

CONCLUSION

Yes. Section 1090 would prohibit the Councilmember from making or participating in making, and the City from entering into or extending, a contract with a potential City contractor if the Councilmember's spouse becomes an employee, agent, or subcontractor of that contractor unless a statutory exception or the rule of necessity applies. Based on the facts presented, no

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

statutory exception nor the rule of necessity would apply to a potential contract between the City and 3Di if the Councilmember's spouse becomes an employee, agent, or subcontractor of 3Di.

FACTS AS PRESENTED BY REQUESTER

You are an Assistant City Attorney for the City of Los Angeles and the authorized representative of Los Angeles City Councilmember John Lee. The Councilmember first assumed his seat on August 30, 2019, following a special election to fill a vacancy, and was recently reelected to his position for the term which began on December 14, 2020 and will expire in December 2024. Councilmember Lee currently is the Chair of the City Council's Information Technology Committee.

According to the Councilmember, his spouse, Sheila Lee, has a 20-year career in public-sector information technology solutions and has spent 13 years in public-sector sales of IT solutions and services. Prior to the Councilmember's election, Mrs. Lee was employed as an Account Executive or Director of Sales with 3Di, an information technology solutions and services company that contracts with the City. In relation to Mrs. Lee's employment with 3Di, the Councilmember provided the following timeline:

- On July 30, 2018, prior to the Councilmember running for office, 3Di made a written offer of employment to Mrs. Lee, but she decided to accept another employment offer instead.
- In November 2018, Mrs. Lee circled back with 3Di and inquired about the offered position.
- In January 2019, the Councilmember launched his campaign to run for City Council.
- On February 4, 2019, Mrs. Lee accepted a position with 3Di.
- On August 13, 2019, the Councilmember was elected to fill a vacant seat on the City Council.
- In November 2019, the City Attorney's Office advised the Councilmember that, given his spouse's recent employment with 3Di, the City would not be able to enter into new contracts or contract amendments with 3Di, including a then proposed contract that would require City Council approval.
- On November 26, 2019, Mrs. Lee resigned from 3Di to limit any negative consequences to either the City or 3Di.

Mrs. Lee would like the option to resume her employment with 3Di, or to work for another technology company that has an established relationship with the City, and to perform work on both City matters and with other agencies on non-City matters. Any work for the City would be limited to providing support on an existing contract, and would not involve soliciting additional work, negotiating a contract, or commission pay.

Mrs. Lee states that given that a majority of technology companies that are established to serve the public sector contract with the City, it is an extreme hardship for her to find a technology company that serves the public sector, the portion of the information technology industry in which she has the most experience and expertise, which is not already contracting with or looking to contract with the City.

City Structure

The Municipal Corporation of Los Angeles includes offices, proprietary departments, and general funded departments. The Mayor proposes and the City Council approves the budget for all general funded departments. The City Council does not approve the budgets of the three proprietary departments – Airport, Harbor, and Water and Power. Additionally, several departments primarily receive their revenue through special funds, though the City Council might in any particular year approve general fund supplements to those budgets. The Mayor appoints and the City Council confirms the general managers of the general funded departments as well as the commissioners for most departments. The Mayor and City Council also approve or confirm the general managers of the propriety departments.

City Contracts

Pursuant to the City Charter and adopted ordinances, the City Council is required to approve certain contracts, including long-term contracts as defined by ordinance. These may include certain contracts proposed by proprietary departments.² Generally, a long-term contract, including a technology contract for a term of more than three years, requires City Council approval. Additionally, contract amendments that extend a contract beyond three years or that meet a monetary threshold value are subject to City Council approval.³ Contracts that do not require City Council approval still require the approval of the head of the authorizing Department, either the department's board or commission or the general manager.⁴ You note that the City Council approves a majority of City departments' budgets.

Additionally, no action of a City board or commission is final for five days,⁵ allowing the City Council the opportunity to move to consider and potentially disapprove of the action. Of the thousands of actions taken by City boards or commissions, only a small number are considered for potential disapproval by the City Council each year. Most disapprovals involve planning matters, but on occasion, the City Council has disapproved of a contracting decision made by a City board or commission.

Technology companies, including 3Di, often seek and enter into contracts with the City through its various departments. For example, 3Di has a number of contracts with the City from at least 2004 through the present:

- In 2004, 3Di provided the Department of Housing the first field mobile inspection solution.

² City Charter Section 373; Los Angeles Administrative Code Section 10.5.

³ Los Angeles Administrative Code Section 10.5.5(b).

⁴ Los Angeles Administrative Code Section 10.1.1.

⁵ City Charter Section 245.

- In 2013, 3Di created the City's MYLA 311 system, a civic engagement platform, and 3Di has maintained the system since its creation. The contract to maintain the system is set to expire in February 2021, but you state that it is likely to be extended at that time.
- Also in 2013, 3Di provided the Department of Water and Power with a customer self-service portal.
- 3Di has also consistently had contracts with the City's Information Technology Agency since at least 2008.

Additionally, 3Di has a number of current contracts with the City involving departments, including a five-year contract with the Information Technology Agency to serve on a panel of qualified contractors to provide technology services on an as needed basis (approved by City Council), as well as contracts with the Housing and Community Investment Department (extension approved by City Council, expires June 2021) and the Fire Department (extension recently approved by City Council, expires February 2021). 3Di also has contracts with the City's Department of Building and Safety (expires February 2023), Police Department (expires March 2021), and Department of Public Works/Bureau of Sanitation (expires April 2021).

ANALYSIS

Section 1090 states, "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees 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." Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest."⁶ A contract that violates Section 1090 is void.⁷ Section 1090 is concerned with financial interests, other than remote or noninterests, that prevent a public official from exercising absolute loyalty and undivided allegiance in furthering the best interests of the official's agency.⁸

An officer is conclusively presumed to be involved in the making of his or her agency's contracts when the officer is a member of a board or commission that has the authority to execute the contract at issue.⁹ As a general rule, when Section 1090 applies to one member of a governing body of an agency, the entire governing body is precluded from entering into the contract.¹⁰

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract.¹¹ Participation is defined broadly for purposes of Section 1090 to include any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation of bids.¹² For example, an officer may be convicted of a

⁶ *People v. Honig* (1996) 48 Cal.App.4th 289, 333.

⁷ *Thomson v. Call* (1985) 38 Cal.3d 633, 646.

⁸ *Stigall v. Taft* (1962) 58 Cal.2d 565, 569.

⁹ *Thomson, supra*, at pp. 645 & 649; *Fraser-Yamor Agency, Inc., supra*, at pp. 211-212.

¹⁰ *Stigall, supra*, at p. 569.

¹¹ *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.

¹² *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, at p. 569.

violation of Section 1090 if it is established that he or she had the opportunity to, and did, influence execution of the contract directly or indirectly to promote his or her personal interests.¹³

Neither Section 1090 nor its broader statutory scheme specifically defines the term “financially interested.”¹⁴ Instead, courts have interpreted that phrase to broadly encompass anything that would tie a public official’s fortunes to the existence of a public contract.¹⁵ The 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.¹⁶ A financial interest may include an official’s prospect of future business opportunities related to the contract or the board member’s desire to maintain a favorable ongoing relationship with the contracting party.¹⁷

Under settled case law, Attorney General’s opinions, and Commission advice letters, an officer is *always* financially interested in a source of income to his or her spouse for purposes of Section 1090.¹⁸ This is true even if the spouses have agreed that each’s own earnings are to be treated as separate property, because each spouse is liable for the necessities of life for the other.¹⁹ Therefore, for purposes of Section 1090, the Councilmember would have a financial interest in a potential City contractor, such as 3Di, if the Councilmember’s spouse becomes an employee, agent, or subcontractor of that contractor, unless a statutory exception or the rule of necessity applies.

The facts presented provide no indication that any statutory exception²⁰ or the rule of rule of necessity would apply to a potential contract between the City and 3Di if the Councilmember’s spouse begins working for 3Di. Thus, the Councilmember would have a prohibited financial interest in a contract between the City and 3Di under Section 1090 if Mrs. Lee becomes an employee, agent, or subcontractor of 3Di.²¹

¹³ *People v. Sobel*, *supra*, at p. 1052.

¹⁴ Sections 1090 – 1097.

¹⁵ *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4d 1323, 1335.

¹⁶ *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).

¹⁷ 86 Ops.Cal.Atty.Gen. 187, 189 (2003).

¹⁸ 78 Ops.Cal.Atty.Gen. 230 (1995); 81 Ops.Cal.Atty.Gen. 169 (1998).

¹⁹ *Reece v. Alcoholic Bev. Etc. Appeals Bd.* (1976) 64 Cal.App.3d 675, 683; *Nielsen v. Richards* (1925) 75 Cal.App. 680, 685-687; 73 Ops.Cal.Atty.Gen. 191, 194-195 (1990); 69 Ops.Cal.Atty.Gen. 102, 106 (1986).

²⁰ Based on the facts presented, the respective remote interests of Section 1091(b)(2) and (8) do not apply because there is no indication that the requisite three-year requirement of Section 1091(b)(2) or the requisite five-year requirement of Section 1091(b)(8) has been met by 3Di’s former employment of the Councilmember’s spouse.

²¹ You have also asked whether Section 1090 would apply if the Councilmember’s spouse does work for a subcontractor of 3Di. This question, however, appears to be hypothetical, and you have not provided sufficient facts for us to analyze the question. As noted above, an officer is *always* financially interested in a source of income to his or her spouse for purposes of Section 1090. (See fn. 13.) Thus, we can only generally advise that Section 1090 would apply to the Councilmember with respect to a contract between the City and 3Di if the Councilmember had a prohibited financial interest in that contract due to his spouse’s work for the subcontractor.

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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