



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 13, 2021

Adam J. Bass
President and Chief Executive Officer
Buchalter Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-1730

Re: Your Request for Advice
Our File No. I-20-118

Dear Mr. Bass:

This letter is in response to your request for advice on behalf of the California Transportation Commission (CTC) and CTC Commissioner Hilary Norton regarding the conflict of interest provisions of the Political Reform Act (the Act)¹ and Section 1090. Your request seeks general guidance and is not limited to a specific governmental decision,² thus we are providing informal advice, not formal advice.³ Please note that our statutory authority to provide advice is limited to the Act and Section 1090. Our analysis is based solely on the facts you provide. Thus, our advice is as complete and accurate as the facts provided in your request for advice. If the facts underlying this advice change, then 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 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 the Act or Section 1090 generally prohibit Commissioner Norton from participating in CTC decisions relating to various businesses and other entities that have conducted business with Effect Strategies, a firm in which she is a 30% owner?

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 A formal advice request will be declined in writing where the request Presents an overly broad, or hypothetical question that lacks a specific issue or accompanying facts necessary to evaluate and analyze the required elements of compliance with the Act. (Regulation 18329(b)(6)(F).)

³ Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Under the Act, Commissioner Norton has a potentially disqualifying financial interest in Effect Strategies as well as any source of income to Effect Strategies if her pro rata share of income received from the source is \$500 or more in the 12 months prior to the decision. Based on the facts provided, it appears Commissioner Norton may also have potentially disqualifying financial interests in California Community Foundation (CCF)/Fixing Angelenos Stuck in Traffic (FAST), FASTLinkDTLA, and LA Streetcar as sources of income based on their payments to Effect Strategies however, this determination will depend on the amount of income received from these entities in the 12 months prior to the decision. Finally, it does not appear that Commissioner Norton has financial interest in Jacobs Engineering (Jacobs) and Tetra Tech because the facts indicate all work has been completed more than 12 months ago, and no additional payments are expected.

Nonetheless, the facts provided do not identify any decisions before the CTC to determine whether Commissioner Norton is disqualified from taking part in the decision under the Act due to her identified financial interests. Generally, we caution that Commissioner Norton is potentially prohibited under the Act from taking part in any decision if it is reasonably foreseeable that the decision will have a material effect on her financial interest. We further caution that this prohibition may also include decisions not directly involving her financial interests. Under Section 1090, we do not provide informal advice. Commissioner Norton would need to seek additional advice if there is a specific contract at issue with the CTC and any of the entities identified. Section 1090 would generally preclude Commissioner Norton and the CTC from entering any contract with Effect Strategies because of her ownership interest.

FACTS AS PRESENTED BY REQUESTER

Commissioner Norton is the Deputy Legal Affairs Secretary for the Office of the Governor and Vice Chair of the CTC.

Effect Strategies - Commissioner Norton is a 30% owner of this communications firm, and this is the sole entity from which she anticipates receiving income in 2020.

CCF - Commissioner Norton was an independent contractor under her position as the executive director of FAST, a CCF Community Initiative Fund. CCF is also the parent non-profit for FAST. CCF was a subcontractor to the Los Angeles Department of Transportation (LADOT) for the FASTLinkDTLA grant, which was funded through Metro ExpressLanes Net Toll Revenues. Commissioner Norton concluded her paid work on this project in March 2019 and received her last payment from CCF related to this project on December 31, 2019. Effect Strategies, however, is entitled to and expects to receive reimbursements for costs previously incurred. There is no ongoing paid work on this project.

FASTLinkDTLA - This entity is Effect Strategies' client. Effect Strategies is working to obtain this entity's non-profit status as a Transportation Management Organization (TMO). The intention is that once this entity is approved as a non-profit, it will provide services to and receive

payment from private DTLA employers, building owners and residents, not from public entities. FASTLinkDTLA would then pay Effect Strategies for the work Effect Strategies provides. Commissioner Norton has no direct financial interest in this entity. However, her firm is likely to receive payments from this entity. Also, Commissioner Norton does not believe FASTLinkDTLA will ever come before the CTC because it will not accept public funds.

Jacobs - Effect Strategies was a subcontractor under Jacobs on a project for the Los Angeles Department of Sanitation (LASAN). The last payment to Effect Strategies for Commissioner Norton's work was August 2019, and the contract ended in October 2019. There is currently no ongoing work with this entity and Commissioner Norton has no direct financial interest in it. However, her firm received its last payment from Jacobs in August 2019 and its contract with Jacobs ended in October 2019.

Tetra Tech - Effect Strategies has been a subcontractor to this entity for various contracts that Tetra Tech had with the City of Los Angeles. Effect Strategies received a payment from Tetra Tech for this work in January 2019. Effect Strategies had another contract for \$15,000 with Tetra Tech and completed work on the contract in February 2020. While Tetra Tech subcontracted the work, it retained a small portion of the contracted sum.

LA Streetcar - This entity is Effect Strategies' client for community outreach. This project is not receiving or seeking any funding from the State of California, and Metro funding for the LA Streetcar was approved through Measure M – Los Angeles County's transportation sales tax measure – in 2016. Metro has yet to transmit those funds to the project. Commissioner Norton has no direct financial interest in this entity. However, Los Angeles Streetcar is an Effect Strategies client and Effect Strategies will likely receive funds from Los Angeles Streetcar for its work.

Neither Commissioner Norton nor any entity in which she has an ownership interest has any active contract with Metro, California Community Foundation/FAST, LADOT, LASAN, Tetra Tech, Jacobs Engineering, or the City of Los Angeles. Nor is Commissioner Norton receiving any payments from any of these entities. The last work done by Commissioner Norton for any of these entities was March 2019.

ANALYSIS

A. The Act.

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).)

An official's interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103; the following interests are relevant to the facts provided:

- An interest in any business in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).) Income includes promised income (Section 82030.5(a)) as well as an individual's pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater (Section 82030(a)).
- An interest in the official's personal finances and those of immediate family members. (Section 87103.)

1. Foreseeability and materiality.

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. An official's financial interest is explicitly involved in a decision and is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, a decision before the official or the official's agency. (Regulation 18701(a).) Regulation 18701(a) establishes that a financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a source of income is also material if the source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party. (Regulation 18702.3(a)(1).) If the business entity is not explicitly involved in a governmental decision, then the financial effect is material if "[t]he decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities" as specified in Regulation 18702.1(a)(2), or "[t]he decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than" the amounts set forth under Regulation 18702.1(a)(3). (Regulation 18702.3(A)(4).)

2. Commissioner Norton's financial interests.

As CTC's Vice Chair, Commissioner Norton is a "public official" subject to the Act's conflict of interest provisions. (Sections 87100, 87103, 87200; Regulation 18700(b)(1).)

Effect Strategies – Commissioner Norton has a financial interest in Effect Strategies because she has a direct investment in a business entity worth \$2,000 or more under Section 87103(a). Commissioner Norton also has a financial interest in Effect Strategies as a source of income provided she receives \$500 or more from her business in the 12 months prior to any particular decision.

CCF – Commissioner Norton received her last contract payment for the project from CCF more than 12 months ago on December 31, 2019. (Section 87103(c).) However, the facts provided state that Effect Strategies will still be receiving reimbursements for costs incurred on the project. Accordingly, Effect Strategies is still promised income from CCF, and Commissioner Norton has a financial interest in CCF to the extent that her pro rata share of the income due is \$500 or more.

FASTLinkDTLA and Los Angeles Street Car – While Commissioner Norton has no direct financial interest in these entities, they are clients of Effect Strategies. Commissioner Norton has an interest in either of these entities as a source of income if her pro rata share of income received by Effect Strategies is \$500 or more in the 12 months prior to any specific decision.

Jacobs – The last payment to Effect Strategies from Jacobs was made in August 2019, the contract ended in October 2019, and there is currently no ongoing work with this entity. Based on these facts, Commissioner Norton has no financial interest in Jacobs under the Act at this time.

Tetra Tech – Effect Strategies has completed all work for Tetra Tech prior to February 2020. However, Effect Strategies retained some of the payments for that contract. Thus, Commissioner Norton has an interest in Tetra Tech as a source of income if her pro rata share of income received by Effect Strategies is \$500 or more in the 12 months prior to any specific decision.

3. Financial interest in a governmental decision.

The facts provided do not identify any specific governmental decisions before the CTC to enable us to analyze whether the Act prohibits Commissioner Norton from taking part in a decision if it is reasonably foreseeable that the Act will have a material effect on her financial interests. Whether or not Commissioner Norton has a conflict of interest in any particular decision can be analyzed only after the decision has been identified and described.

Nonetheless, we do caution that Commissioner Norton is generally prohibited from taking part in any decision in which Effect Strategies is explicitly involved, as well as any decision in which a client of Effect Strategies is explicitly involved if Commissioner Norton's pro rata share of income received by Effect Strategies from the client is \$500 or more in the 12 months prior to the decision. We also caution that Commissioner Norton may be prohibited from decisions in which her interests are not explicitly involved including decisions implicating former clients of Effect Strategies if it is reasonably foreseeable that the decision may have a material effect on her interests. To the extent a specific decision implicates a former client in which Commissioner Norton does not have a financial interest, Commissioner Norton may wish to seek additional advice

identifying the nature of the decision if there is any indication the decision may lead to additional business between Effect Strategies and the former client.

B. Section 1090.

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 concerns 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.) “[A]n official has a financial interest in a contract if he might profit from it.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) 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.)

We do not provide informal advice under Section 1090. (See Regulation 18329(c).) Commissioner Norton would need to seek additional advice if there is a specific contract at issue with the CTC and any of the entities identified. However, we can advise that Section 1090 would generally preclude Commissioner Norton and the CTC from entering any contract with Effect Strategies because of her ownership interest in that company.

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

Sincerely,

Dave Bainbridge
General Counsel

John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:dkv