



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 18, 2021

Rita L. Neal  
County Counsel  
1055 Monterey Street  
San Luis Obispo, CA 93408

Re: Your Request for Advice  
**Our File No. A-21-072**

Dear Ms. Neal:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict 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 San Luis Obispo 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 either the Act or Section 1090 prohibit an employee for San Luis Obispo County from taking part in decisions concerning the Morro Shores Mobile Home Park development project given her in-laws recently purchased a manufactured home located in the park?

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<sup>1</sup> 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.

## CONCLUSION

No. The employee does not have a financial interest in her in-laws' residence in the park under either the Act or Section 1090, and she may therefore take part in decisions concerning the project.<sup>2</sup>

## FACTS AS PRESENTED BY REQUESTER

You are Chief Deputy County Counsel for the County of San Luis Obispo seeking advice on behalf of Kerry Brown, Supervising Planner for the San Luis Obispo County Planning and Building Department. She is the lead planner for the Morro Shores Development Plan which is an expansion of 10 new mobile homes in the existing Morro Shores Mobile Home Park in Los Osos. The existing Morro Shores Mobile Home Park consists of 164 sites and is age restricted (55 years or older). The permit has been in process since November 2020.

As the lead project planner, Ms. Brown will be responsible for: (i) evaluating the project as against the County's local land use policies and zoning code; (ii) evaluating the project's environmental impacts under the California Environmental Quality; and (iii) making recommendations and answering questions to the County's decision-making bodies including the Planning Commission and potentially the Board of Supervisors if the project is appealed.

Ms. Brown recently became aware that her in-laws purchased a mobile home in the Morro Shores Mobile Home Park. More specifically, her in-laws purchased the mobile home and rent the space under the home from the owner, MH Village, Inc. Neither Ms. Brown nor anyone in her immediate family are financially dependent on her in-laws. Any financial support that Ms. Brown receives from her in-laws is in the nature of normal gift giving and family get togethers. The proposed location for the additional 10 new mobile homes is not near to her in-law's mobile home, no new facilities are proposed, and the additional homes will have de minimis impact on any homeowner's association dues.

## ANALYSIS

### *The Act*

Section 87100 prohibits any public official from making, participating in making, or otherwise 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, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).)

Section 87103 of the Act lists several types of financial interests that can give rise to a conflict of interest, including:

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<sup>2</sup> We caution that this conclusion is limited to the provisions of the Act and Section 1090. The Fair Political Practices Commission cannot provide advice outside of these provisions. Accordingly, we express no opinion regarding the potential application of common law conflict of interest provisions.

- An economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18702.1); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18702.2.)
- An economic interest in any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18702.3.)
- An economic interest in any source of gifts to him or her if the gifts aggregate to \$500 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18702.4.)
- An economic interest in his or her personal finances, including those of his or her immediate family — this is the “personal financial effects” rule. (Section 87103; Regulation 18702.5.)

We have no facts to suggest that any of these enumerated economic interests are implicated in decisions regarding the Morro Shores Development Plan. The Act only prohibits financial conflicts of interest, not personal inclinations toward one side or the other of an issue. As defined by the Act, a public official’s interests do not extend to the interests of the official’s in-laws. (See, e.g., *Podesta Advice Letter*, No. A-05-025; *Tessitor Advice Letter*, No. A-03-167.)

Accordingly, the Act’s conflict of interest provisions would not disqualify Ms. Brown from taking part in decisions concerning the Morro Shores Development Plan.

### *Section 1090*

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. 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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Thus, if Ms. Brown were to have a conflict of interest issue under Section 1090, she would have to be making a contract that concerns the Morro Shores Development Plan and she would have to be “financially interested” in that contract.

In 92 Ops.Cal.Atty.Gen. 19 (2009), the Attorney General analyzed whether a redevelopment agency board member had a conflict of interest if the agency entered into a loan agreement with the board member’s adult son who resided with the board member but was not her dependent. In the portion of the opinion analyzing Section 1090, it was noted that, under Section 1091(b)(4), an official has a “remote interest” in the earnings of his or her minor child, but the Section 1090 statutory scheme makes no reference to interests in an adult child. Further, the opinion stated that there was no evidence the board member would profit from the loan transaction. Consequently, the opinion concluded that the board member had no financial interest in the contract and thus had no

conflict of interest under Section 1090, stating: “[a] parent is not legally compelled to support an adult child absent special circumstances not present here, such as the child’s incapacity. Conversely, an adult child has no legal duty to support a parent, unless the parent is “in need and unable to support himself or herself by work,” a circumstance also not present here. [Footnotes omitted.]

We agree with this opinion and think its rationale applies to Ms. Brown’s circumstances. Under the facts considered in the opinion, the official’s son was an adult, not a dependent of the official and, even though he lived with the official, had no apparent financial relationship with the official. Here, the relationship at issue is even more remote – the facts suggest Ms. Brown’s in-laws are not dependent on her, financially or otherwise, and she has no apparent financial relationship with them.

Consequently, based on these facts, we conclude that Ms. Brown has no financial interest in her in-laws for purposes of Section 1090 and is thus not prohibited from taking part in County contracting decisions with respect to the Morro Shores Development Plan.<sup>3</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*

Jack Woodside  
Senior Counsel, Legal Division

JW:dkv

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<sup>3</sup> This conclusion is consistent with *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090-91, which applied the “in pari materia” canon of statutory construction in determining that Section 1090 should be harmonized with the Act when possible. As explained by the court, “it is well established that Section 1090 and the Act are “in pari materia.” (*Ibid.*) “Statutes ‘in pari materi’ should be construed together so that all parts of the statutory scheme are given effect.” (*Ibid.*, citing *People v. Lamas* (2007) 42 Cal.4th 516, 525.)