



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 9, 2021

Melissa Crosthwaite
Assistant City Attorney
4455 126th Street
Hawthorne, CA 90250

Re: Your Request for Advice
Our File No. A-21-080

Dear Ms. Crosthwaite:

This letter responds to your request for advice on behalf of Hawthorne Interim City Manager Von Norris regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090 and the Act, 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 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

Under Section 1090 and the Act, may Hawthorne Interim City Manager Von Norris represent the City in labor negotiations with the Hawthorne Executive Group (“HEG”), a bargaining unit comprised of City department heads and other top-level management, given that he has a contractual right to return to his position as the Director of Community Services, and an HEG member, once his interim term expires?

CONCLUSION

No, under Section 1090, Mr. Norris is prohibited from taking part in the labor negotiations with HEG because they would impact his potential future salary and benefits as an HEG member.²

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.

FACTS AS PRESENTED BY REQUESTER

The City of Hawthorne (“City”) recently appointed Von Norris as its Interim City Manager. Mr. Norris formerly served as the City’s Director of Community Services, and when his interim position ends, he has a contractual right to return to that position. Mr. Norris entered into an employment agreement with the City to serve as Interim City Manager on May 11, 2021 regular City Council meeting. While it is his intention to apply for the permanent City Manager position, which will be done through a recruitment firm within the next few months, his employment agreement provides: (1) it is for a minimum of six (6) months, (2) if the City terminates his agreement (which can be at any time), Mr. Norris “shall continue his employment as an at-will Director of Community Services subject to the normal terms and conditions (including same salary step and merit pay level) that existed before appointment as an Interim City Manager.”

Further, as Director of Community Services, Mr. Norris would be a member of the Hawthorne Executive Group (“HEG”), a bargaining unit of the City made up of Department heads and other top-level management. The City’s Memorandum of Understanding (“MOU”) with HEG has expired and the City is about to enter negotiations with the HEG group. At the same meeting where Mr. Norris’ agreement was approved (May 11, 2021), Mr. Norris was appointed as the City’s labor negotiator (it is customary in Hawthorne for the City Manager as well as the Human Resources Director who is *not* a member of the HEG in Hawthorne engage in the negotiations).

Mr. Norris would be negotiating on behalf of the City and it is possible that any salary increase or increase in benefits (which would apply to everyone in the HEG) would be applied to him if he returns to the Director of Community Services position. The question is whether he can serve as labor negotiator under these circumstances. Again, there would be no negotiation regarding his specific job classification—only salary and benefits applying to the entire group equally.

ANALYSIS

Section 1090 provides that public officials “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 a member.” 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. City of Taft* (1962) 58 Cal.2d 565, 569.) Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) When Section 1090 is applicable to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647-649.)

² While Interim City Manager Von Norris may not participate in the labor negotiations, Section 1090 does not prohibit the City Council or the Human Resources Director, who is not a member of the HEG, from negotiating the bargaining agreement.

Under Section 1090, officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Honig, supra*, 48 Cal.App.4th at p. 333.) 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. (See, e.g., *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002).)

Under Section 1091.5(a)(9), a public official is deemed to not be interested in a contract—and therefore may take part in the contracting process—if the official’s interest is “[t]hat of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.” Section 1091.5(a)(9) is applicable where an official has an interest “in whatever indirect or incidental benefits might arise from the simple fact of contracting with or on behalf of one’s employer,” but does not apply where the contract under consideration would “actually affect a direct change in the [public official’s] personal compensation.” (99 Ops.Cal.Atty.Gen. 35 (2016); see also *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1083-1084 [Section 1091.5(a)(9) “does not extend further to contracts that . . . most directly affect one’s interests by actually altering the terms of one’s employment . . .”].)

Section 1091(b)(13) similarly provides that a public official has only a “remote” interest in a contract—such that the contract may still be entered into without the official’s participation—if the official’s interest is “[t]hat of a person receiving salary, per diem, or reimbursement for expenses from a government entity.” As with Section 1091.5(a)(9), however, the Supreme Court of California has explained that while Section 1091(b)(13) “relaxed the prohibition against contracting in a way that affected one’s own department, it did so only so long as the contract in question would not result in personal financial gain.” (*Lexin, supra*, 47 Cal.4th at p. 1081.) Further, the California Attorney General has opined that Section 1091(b)(13) “addresses the situation where a contract involves an official who is a member of a board,” but does not apply where the public official at issue “acts as an individual city officer rather than as a member of a board.” (99 Ops.Cal.Atty.Gen. 35.)

Here, Mr. Norris is currently serving as Interim City Manager until his six month term expires. While the facts indicate that Mr. Norris intends to apply for the permanent City Manager position in several months, his application and hiring are speculative at this time. At the end of his term, he has a contracted right to return to his prior position as Director of Community Services. In that position, he would once again be a member of HEG. Mr. Norris’s negotiations with HEG on behalf of the City would be to his potential benefit or detriment; that is, the terms he would negotiate as Interim City Manager would change his salary and/or benefits when he resumes his position as Director of Community Services. Additionally, Mr. Norris would be acting as an individual city officer, rather than as a member of a board. Accordingly, neither Section 1091(b)(13) nor 1091.5(a)(9) is applicable and Section 1090 prohibits Mr. Norris from taking part in the contracting process.

Having concluded that Mr. Norris is prohibited from taking part in the labor negotiations and contracting process on behalf of the City under Section 1090, we need not further analyze the issue under the Act.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to be 'K. Cornwall', with the initials 'K.C.' written below it.

By: Kevin Cornwall
Counsel, Legal Division

KMC:dkv