



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
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November 8, 2021

Randy J. Risner
Chief Assistant City Attorney
City Attorney's Office
555 Santa Clara Street
Vallejo, CA 94590

Re: Your Request for Advice
Our File No. A-21-092

Dear Mr. Risner:

This letter responds to your request for advice on behalf of City of Vallejo Mayor Robert McConnell and City Councilmember Tina Arriola regarding the conflict of interest provisions of the Political Reform Act (the "Act")¹ and Section 1090. 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, and any immunity it may provide, 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.

Please also note that the Commission does not provide advice regarding past conduct. (Section 1097.1(c)(2); Regulation 18329(b)(6)(A).) Accordingly, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter only apply to prospective actions.

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 Solano 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).)

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 (the "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. Section 1097.1 sets forth the Commission's jurisdiction with respect to Section 1090 et seq.

QUESTIONS

1. Does Section 1090 prohibit the City of Vallejo from entering into a grant agreement with the Mira Theater Guild given that Councilmember Arriola and Mrs. Paula McConnell, Mayor McConnell's wife, were members of the Guild's Board of Directors until they recently resigned?

2. Do the Act's conflict of interest provisions prohibit either Mayor McConnell or Councilmember Arriola from taking part in governmental decisions relating to the potential grant agreement between the City and the Mira Theater Guild?

CONCLUSIONS

1. No. Section 1090 does not prohibit the City from entering into the potential grant agreement with the Mira Theater Guild because the noninterest exception of Section 1091.5(a)(7) would apply so long as the conditions of that exception are fulfilled. Similarly, Section 1090 does not prohibit Councilmember Arriola or Mayor McConnell from taking part in decisions involving the agreement.

2. No. Based on the facts presented, the Act does not prohibit either Mayor McConnell or Councilmember Arriola from taking part in decisions relating to the potential grant agreement because neither the Mayor nor the Councilmember has a financial interest in those decisions.

FACTS AS PRESENTED BY REQUESTER

You are the Chief Assistant City Attorney for the City of Vallejo and the authorized representative of Mayor Robert McConnell and City Councilmember Tina Arriola. You last provided additional facts on September 27, 2021.

In May of 2021, the City Council adopted a resolution allocating \$400,000 for "Community Engagement Programs." Under this resolution, city councilmembers submit recommendations to staff for the allocation of grant funds among various community engagement projects. You state that each councilmember is allotted approximately \$57,000 from which that councilmember may award grants to nonprofit organizations that provide a public service within the City. You also state that each councilmember has the authority to make grant decisions individually without input from other councilmembers. The City enters into a grant agreement with each recipient. In the past, these grant funds have been used for a variety of purposes, including the provision of midnight basketball programs for youth, equipment and supplies for food banks, and training programs for high school students.

The Mira Theater Guild (the "Guild") is a nonprofit theater group located in the City. Until recently, Councilmember Arriola and Mrs. McConnell served on the Guild's Board of Directors. Neither Councilmember Arriola nor Mrs. McConnell received any compensation for service on the Guild's Board. Initially, Mayor McConnell and Councilmember Arriola intended to distribute their allotted grant funds to the Guild, and another Councilmember also intended to award grant funds to the Guild. However, before the funds were distributed to the Guild, City Attorney Veronica Nebb identified potential conflict of interest issues under Section 1090 and the Act and advised those

Councilmembers to hold off on distributing the grant funds to the Guild while her office pursued this advice.

Subsequently, City Attorney Nebb advised that Mayor McConnell and Councilmember Arriola both decided to allocate their allotted funds elsewhere, and different Councilmembers now intended to award a portion of their allotted funds to the Guild, but the award of these funds to the Guild was put on hold pending receipt of this advice. City Attorney Nebb also advised that Councilmember Arriola and Paula McConnell had both resigned from the Guild's Board.

ANALYSIS

Section 1090

Section 1090 generally prohibits public officers and employees, while working in their official capacities, from making contracts in which they are financially interested. 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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 656.) When an officer with a proscribed financial interest is a member of the governing body of a public entity, the prohibition of Section 1090 extends to the entire body, and it applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

We first consider whether Section 1090 would prohibit the City from entering into a grant agreement with the Guild due to Councilmember Arriola and Mrs. McConnell's past service on the Guild's Board of Directors.²

In 86 Ops.Cal.Atty.Gen. 187 (2003), the Attorney General's Office determined that Section 1090 does not include a "reach-back period." The opinion concluded that only during the pendency of a business relationship was there a financial interest from which the official might benefit directly or indirectly. However, if the business relationship is not terminated in a manner that removes "the possibility of any personal influence, either directly or indirectly," Section 1090's prohibition would remain in effect. (See also, 89 Ops.Cal.Atty.Gen. 69 (2006); *Teichert* Advice Letter, No. A-17-118.)

Councilmember Arriola and Mrs. McConnell have both resigned from the Guild's Board. Therefore, so long as their respective resignations removed the possibility of any personal influence on a potential grant agreement between the City and the Guild, their respective statuses as past members of the Guild's Board would not constitute prohibited financial interests in the Guild under Section 1090.

We next consider whether Councilmember Arriola and Mrs. McConnell's respective memberships in the Guild would constitute prohibited financial interests in a potential grant agreement between the City and the Guild under Section 1090.

² It is well-settled that a member of a board or commission always has a financial interest in a source of income to the member's spouse for purposes of section 1090. (See, e.g., 78 Ops.Cal.Atty.Gen. 230, 235 (1995).)

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.) Noninterest exceptions to Section 1090's prohibition are set forth in Section 1091.5. If a noninterest exception applies, the contract may be made without the officer's abstention, and a noninterest generally does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

Section 1091.5(a)(7) provides that an officer or employee has a noninterest in a contract if the officer or employee's interest is that of "a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of first consideration of the contract, and provided further that this interest is noted in its official records."

Neither Councilmember Arriola nor Mrs. McConnell received any compensation from the Guild for their service on the Guild's Board, and the facts presented provide no indication that either receives any compensation for being a member of the Guild. Therefore, so long as the conditions of the noninterest exception of Section 1091.5(a)(7) are fulfilled, that exception applies, and Section 1090 would not prohibit the City from entering into a potential grant agreement between the City and the Guild. Similarly, so long as the conditions of the noninterest exception of Section 1091.5(a)(7) are fulfilled, Section 1090 does not prohibit Councilmember Arriola or Mayor McConnell from taking part in decisions involving the agreement.

The Act's Conflict of Interest Provisions

The Act's conflict of interest provisions prohibit a public official from making, participating in making, or attempting to use one's official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) An official's financial interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103 and include all of the following:

- An interest in any business in which the official has an 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 real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- An interest in any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).)
- An interest in any source of a gift or gifts aggregating \$520 or more in the 12 months prior to the decision. (Section 87103(e).)

- An interest in the official's personal finances and those of immediate family members.³ (Section 87103.)

As noted above, neither Councilmember Arriola nor Mrs. McConnell received any compensation from the Guild for their service on the Guild's Board, and the facts presented provide no indication that either receives any compensation for being a member of the Guild.⁴ Therefore, neither Mayor McConnell nor Councilmember Arriola would have a source of income interest in decisions relating to a potential grant agreement between the City and the Guild. Furthermore, there is no indication that those decisions would have any financial effect on Councilmember Arriola, Mayor McConnell, or Mrs. McConnell's personal finances.

Therefore, based on the facts presented, the Act does not prohibit Mayor McConnell or Councilmember Arriola from taking part in decisions relating to a potential grant agreement between the City and the Guild.

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

MFC:dkv

³ Section 82029 defines "immediate family" to mean the spouse and dependent children.

⁴ Section 82030 provides that an official's financial interest in a source of income includes the official's community property interest in the income of a spouse.