



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 30, 2021

Gregory M. Murphy
City Attorney
City of Buellton
444 South Flower Street - Suite 2400
Los Angeles, California

Re: Your Request for Advice
Our File No. A-21-106

Dear Mr. Murphy:

This letter responds to your request for advice 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 the Act and 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 Santa Barbara 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 the Act and Section 1090, may Buellton City Manager Scott Wolfe take part in contract negotiations between the City and 501(c)(3) non-profit Santa Ynez Valley Senior Citizens’ Foundation for the lease of City real property if his spouse accepts a job working for the non-profit organization?

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 18109 through 18998 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, because the non-profit would be both a source of income and a contracting party, both the Act and Section 1090 would prohibit City Manager Wolfe from taking part in the contracting process, including negotiations. Although City Manager Wolfe would be required to recuse himself from the contracting process, the City would still be permitted to make and enter the leasing contract.

FACTS AS PRESENTED BY REQUESTER

The City of Buellton (“City”) has a population of approximately 5,000 people. The City is located in the Santa Ynez Valley, which has a population of approximately 20,000 people.

Scott Wolfe is the City Manager and has served in that position for the past two years. City Manager Wolfe, his wife, and children moved to the City and reside there.

City Manager Wolfe’s wife, Jennette Wolfe, has become an ingrained part of the community since their move. She currently takes two of their children to preschool outside of the City limits. She has been offered a job with Holy Grounds, a coffee counter to be operated by the Santa Ynez Valley Senior Citizens’ Foundation (“SYVSCF”), a 501(c)(3) nonprofit organization, at or near her children’s preschool site. Specifically, the position is hourly work at a coffee counter serving staff and visitors to the Santa Ynez Valley Presbyterian Church and Preschool in Solvang, California, at which she would work approximately 20 hours per week. The position allows her to stay close to the preschool and attend to her children. She would like to accept the employment offer.

SYVSCF is a 501(c)(3) nonprofit organization with the mission to “promote the common good and general welfare of the senior citizens and other members of the Santa Ynez Valley by providing nutritional, recreational, and transportation resources” through activities such as operation of the Buellton Senior Center, the Valley-wide Meals on Wheels program, a lending closet for durable medical equipment, and referrals for medical services, housing, and counseling. The nonprofit conducts various community activities in the region, including the operation of the Buellton Senior Center in the City. Among its initiatives, the nonprofit organization will also operate the coffee counter where Jennette Wolfe has been offered employment. SYVSCF is not a “for-profit” organization and is funded through public donations and proceeds from the Buellton Senior Center Thrift Store.

The City and SYVSCF are expected to begin negotiations of a lease in the following months for the use of City property to be operated as a new expansion to the existing Senior Center facilities, located on adjacent County-owned property. City Manager Wolfe plans to participate in the negotiations of the lease, if permitted.

ANALYSIS

The Act

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section

87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[a]ny source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c).) Under Section 82030, an interest in income includes an official’s community property interest in the income of a spouse.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. 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).”

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a source of income is 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).)

Here, once Jennette Wolfe has earned \$1,000 or more from SYVSCF, City Manager Wolfe would have an economic interest in SYVSCF as a source of income under the Act (due to a 50% community property interest in his spouse’s earnings). SYVSCF would be directly involved in the governmental decisions as a contracting party to the lease. Accordingly, the Act would prohibit City Manager Wolfe from taking part in the decisions, including participating in the negotiation process, and he would instead be required to recuse himself.

Section 1090

Under Section 1090, 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 the contract. (*Id.* at pp. 647-649.) Here, however, City Manager Wolfe would be acting as an individual officer, rather than as a member of a governing body of a public entity, so the City would not be precluded from entering a contract in the event City Manager Wolfe was disqualified.

Once Jennette Wolfe begins working at Holy Grounds, City Manager Wolfe will have an interest in the operator of SYVSCF as an employer of his spouse. Thus, Section 1090 prohibits City Manager Wolfe from taking part in the negotiation process.² Thus, while neither the Act nor Section 1090 prohibit Jennette Wolfe from accepting a position as an SYVSCF employee at Holy Grounds, her employment would create a conflict of interests that would require City Manager Wolfe to recuse himself from the City's contracting process with SYVSCF. If City Manager Wolfe were to recuse himself and refrain from taking part in negotiations or any other part of the contracting process, the contract would not be "made by them in their official capacity or by any body or board of which they are a member" (given that he is not a member of the City Council) and the City would still be permitted to make and enter into a contract with SYVSCF.

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

Sincerely,

Dave Bainbridge
General Counsel

By: Kevin Cornwall
Counsel, Legal Division

KMC:dkv

² We note that Section 1091 provides an exception for "remote interests," specifically providing, "[a]n officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest." (Section 1091(a).) While Section 1091(b)(1) defines "remote interest" to include an interest as an officer or employee of certain tax exempt non-profit entities, this exception is not applicable given that City Manager Wolfe would be acting as an individual officer, rather than as a member of a board or body.