



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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November 4, 2021

Karl H. Berger  
City Attorney  
16600 Civic Center Drive  
Bellflower, CA 90706

Re: Your Request for Advice  
**Our File No. A-21-127**

Dear Mr. Berger:

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 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).)

## QUESTIONS

1. Does either the Act or Section 1090 prohibit Councilmember Victor Sanchez from participating in decisions involving donors to his nonprofit employer where he solicited donations as part of his fundraising responsibilities for the nonprofit?
2. Does either the Act or Section 1090 prohibit Councilmember Sanchez from participating in decisions solely involving his nonprofit employer?

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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 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.

## CONCLUSIONS

1. Generally, previous donations of \$500 or less to the nonprofit would not have a financial effect that is reasonably foreseeable and material on Councilmember Sanchez's personal finances and he may take part in decisions related to these donors even if he previously solicited the donations, provided he does not promise the donor his vote on the decision in exchange for the donor's contribution to CFCG, which may result in a Section 1090 violation. Moreover, as explained below, the conclusion might be different where the contributions to the nonprofit are larger or when there is a pending solicitation for a contribution at the same time as the proceeding. Accordingly, Councilmember Sanchez should seek additional advice should future decisions involving donors of more than \$500 to his nonprofit employer come before the City Council or if there is a pending solicitation for a contribution at the same time as the proceeding.<sup>2</sup>

2. The Act prohibits Councilmember Sanchez from participating in any decisions that will have a financial effect that is reasonably foreseeable and material on his nonprofit employer, as explained below. In addition, he has a prohibitory financial interest in decisions involving contracts between the City and his nonprofit employer. However, his interest in any contracts is deemed "remote" under Section 1091(b)(1) and the City may enter into such contracts as long as Councilmember Sanchez discloses his interest to the City Council, has his interest noted in the City Council's official records, and recuses himself from the contracting process. Moreover, so long as he recuses himself from the decision, the Act would not apply.<sup>3</sup>

## FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Bellflower seeking this advice on behalf of the City concerning Victor Sanchez, a Councilmember serving on the Bellflower City Council.

Councilmember Sanchez works for the Community Family Guidance Center ("CFGC") as the Director of Community and Donor Relations. CFGC is a 501(c)(3) nonprofit corporation established in 1976. According to its last tax return, CFGC received total revenue of \$6,657,895 in 2019. Generally, CFGC contracts with the County of Los Angeles to provide mental health services to seriously emotionally disturbed children and adults. These services are provided within Los Angeles County including incorporated cities.

The City is located within Los Angeles County and is one of the jurisdictions to which CFGC offers mental health services. Mr. Sanchez's duties as a Director includes seeking donors to contribute money to CFGC for its charitable services. While CFGC compensates Mr. Sanchez an annual salary exceeding \$500, his compensation is based only upon a salary (plus benefits); he does not receive any commission based upon the amount of donations he is able to solicit. Most of the

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<sup>2</sup> In regard to the Act, we provide only informal assistance as you have not identified a specific decision involving either the nonprofit organization or a donor to the nonprofit organization. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

<sup>3</sup> We note that under the Act, an official must recuse following the procedure outlined in Regulation 18707, which also requires the official to announce the interest and leave the room during the discussion and vote.

donations made to CFGC are \$500 or less; most donors must be solicited on an ongoing basis to make contributions.

Because CFGC provides services throughout Los Angeles County (including Bellflower), it is inevitable that Mr. Sanchez will seek donations from companies doing business within the City and/or contracting with the City to provide services. For example, and without limitation, CFGC's donors include CR&R Incorporated ("CR&R") and Southern California Edison ("SCE"). CR&R has a long-standing franchise with the City of Bellflower to provide solid waste hauling services; SCE provides electrical service to the Bellflower community pursuant to a franchise approved (more than 50 years ago) with the City.

## 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 a specified economic interest, including any source of income aggregating five hundred dollars (\$500) or more in value provided or promised to or received by the official within 12 months prior to the time when the decision is made. (Section 87103(c).) Pertinent to these facts, Councilmember Sanchez has an interest in his own personal finances, as well as a source of income interest in CFGC through his work as Director of Community and Donor Relations.

### *Foreseeability*

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in a 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)."

Where an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

### *Materiality*

Under Regulation 18702.5, a governmental decision's reasonably foreseeable financial effect on a public official's financial interest in his or her personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).) Under Regulation 18702.5, the focus is on whether it is reasonably foreseeable that a decision involving a donor to CFGC may result in a \$500 change in Councilmember Sanchez's income from his employer, CFGC, in any 12-month period related to the decision.

According to the facts, Councilmember Sanchez's job duties as Director of Community and Donor Relations relate to obtaining donations to his employer. He receives an annual salary but does not receive any commission based on the amount of donations he solicits. In addition, you state most of the donations made to CFGC are \$500 or less. Given these facts, it does not appear reasonably foreseeable that a decision involving a donor that made a previous donation of \$500 or less to CFGC would have a material financial effect on his personal finances. However, without more facts, we cannot similarly conclude, outside of a specific decision, that there would not be a reasonably foreseeable and material financial effect on his personal finances where the contributions to the nonprofit are larger or when there is a pending solicitation for a contribution at the same time as the proceeding. Any determination in this regard would depend on factors that we do not have before us such as the size of the contribution and the likelihood that the contribution would affect his salary or continued employment with the nonprofit, including the percentage of the nonprofit's funds derived from the contribution as well as the percentage of the official's salary in comparison to the contributions received.<sup>4</sup>

Regulation 18702.3 provides the standards for determining the materiality of a financial effect on a non-profit source of income. Under that regulation, the reasonably foreseeable financial effect of a governmental decision on Councilmember Sanchez's interest in CFGC as a source of income will be material if CFGC "is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party." (Regulation 18702.3(a)(1).) In addition, the financial effect will be material when a decision may result in an increase or decrease of CFGC's annual gross receipts, or the value of its assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of its annual gross receipts and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).) Moreover, the reasonably foreseeable financial effect of a governmental decision on his source of income interest in CFGC will be material if the decision may cause it to incur or avoid additional expenses or to reduce or eliminate

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<sup>4</sup> Note that when elected officials fundraise for charitable purposes, they may have to file a Behested Payment Report. Section 82015(b)(1) provides, in relevant part, that a payment made at the behest of a candidate is considered a contribution unless it is clear from the surrounding circumstances that the payment was made for purposes unrelated to an elected officer's candidacy for elective office. Certain payments are presumed to be for purposes unrelated to an elected officer's candidacy for elective office, including those made principally for a charitable purpose. (Section 82015(b)(2)(B)(iii).) These payments are reportable on a Behested Payment Report, California Form 803, if they are for \$5,000 or more.

expenses in an amount equal to or more than \$250,000, or one percent of its annual gross receipts and the change in expenses is equal to or greater than \$2,500. (Regulation 18702.3(a)(3)(B).)<sup>5</sup>

Given the above, Councilmember Sanchez may take part in governmental decisions to the extent those decisions will not have a reasonably foreseeable, material impact on CFGC (or any other economic interest he may have, including his personal finances). We caution whether the Act prohibits an official from taking part in a governmental decision based on a conflict of interest is a fact-specific inquiry made on a decision-by-decision basis. Therefore, if he is faced with a specific governmental decision and is unsure of how the Act may apply, he should seek additional advice.

### **Section 1090**

Section 1090 generally prohibits a public officer or employee, while acting in his or her official capacity, from making or participating in the making of a contract in which the officer or employee is financially interested. 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.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) A development agreement is a contract for purposes of Section 1090. (*Wilkins Advice Letter*, No. A-18-227; 78 Ops.Cal.Atty.Gen. 230 (1995).)

*Torres v. City of Montebello* (2015) 234 Cal.App.4th 382 concerned an allegation that a councilmember (Salazar) had a Section 1090 conflict of interest in a decision by the city whether to contract with a company, Athens, a private donor to her nonprofit organization. At the time of the decision, the councilmember was the chief executive director of MELA Counseling Services Center (MELA). The councilmember and her husband founded MELA (a nonprofit drug counseling organization) in 1993 and the councilmember received an annual salary of \$75,000 from MELA. MELA received its funding from county contracts, grants, and private donations. The allegation was that the councilmember was financially interested in the Athens contract because Athens had donated money in the past to MELA. The Court of Appeal disagreed:

Had the vote concerned a contract with MELA, or had Athens conditioned future contributions to MELA on approval of the Contract, then Salazar, as a MELA officer, would have been subject to section 1091’s disclosure and abstention requirements. But MELA was not a party to the Contract and the trial court specifically found, based on the evidence, that ‘Salazar did not receive any promises from Athens for her vote.’ MELA simply had no financial interest in the Contract. And, because MELA had no financial interest in the Contract, it follows that Salazar had no remote interest by virtue of her employment as a MELA officer.

(*Torres, supra*, 234 Cal.App.4th at p. 402.)

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<sup>5</sup> Additionally, under Regulation 18702.3’s “nexus test,” any reasonably foreseeable financial effect on a source of income to a public official or the official’s spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source [of income] and the official or the official’s spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

The *Torres* court's analysis of Section 1090 and 1091 (pertaining to remote interests) is applicable here. Councilmember Sanchez would have a remote interest in governmental decisions if they involved a contract with his nonprofit employer, CFGC. Similarly, under the "remote interest" exceptions provided in Section 1091, an official is deemed to have a "remote interest" if the interest is "[t]hat of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) . . ." (Section 1091(b)(1)). A governmental body or board may still enter into the contract at issue, as long as the disqualified official's interest is disclosed to the body or board and noted in its official records, and the disqualified official does not take part in the contracting process. (Section 1091(a).)

However, where a decision merely involves a donor to CFGC, as long as Councilmember Sanchez does not promise the donor his vote on the decision in exchange for the donor's contribution to CFGC, Section 1090 is inapplicable and he may participate in the decision, provided he is not otherwise disqualified under the Act.<sup>6</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>6</sup> We also note that Section 1090 and the Act's conflict of interest provisions establish a floor, not a ceiling, for the conduct of public officials, and public officials may still recuse themselves from decisions where they are not strictly prohibited from participating under those provisions.