



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 03, 2022

Samantha W. Zutler
City of Healdsburg
1 California Street - Suite 3050
San Francisco, California 94111-5432

Re: Your Request for Advice
Our File No. A-21-132

Dear Ms. Zutler:

This letter is in response to your request for advice on behalf of City of Healdsburg (the City) City Councilmember Ariel Kelley regarding the conflict-of-interest provisions of the Political Reform Act (the Act)¹ and Section 1090. Please note that we provide advice under the Act and Section 1090 only, not under any other body of law. We are not a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Our advice is based solely on the facts provided. Thus, our advice is as complete and accurate as the facts provided by the requester. If the facts relevant to your request for advice change, then 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 Sonoma 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 Councilmember Kelley have a conflict of interest under the Act regarding any contracts entered into between the City and Corazon Healdsburg (Corazon), a local non-profit community, from which she last received compensation on June 14, 2021?
2. Does Councilmember Kelley have a conflict of interest under Section 1090 regarding any contracts entered into between the City and Corazon?

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.

CONCLUSION

1. Yes. Under the Act, Councilmember Kelley has an interest in Corazon as a source of income and it is reasonably foreseeable that any decision involving a contract with Corazon will have a material financial effect on this interest. Accordingly, Councilmember Kelley may not take part in these decisions and she must recuse herself under the Act.²

2. No. Councilmember Kelley has terminated her business relationship with Corazon and thus has no conflict of interest under Section 1090 in the City's contract decisions involving Corazon. Accordingly, Section 1090 does not prohibit the City from entering the contract.

FACTS AS PRESENTED BY REQUESTER

Councilmember Kelley has authorized you, the City Attorney for the City of Healdsburg, to request formal advice about whether she may participate in upcoming City Council decisions regarding the City's universal basic income (UBI) program. This program is being administered by Corazon Healdsburg (Corazon), from which Councilmember Kelley has received income in the previous twelve months.

Corazon is a local non-profit community organization. Councilmember Kelley was the CEO of Corazon before she was elected to the City Council. She last received salary from Corazon on October 23, 2020. After her employment as the Corazon CEO, she served as a consultant for Corazon. She last received consultant fees from Corazon on June 14, 2021.

On September 7, 2021, the City Council allocated funds to support a UBI program in the City, with the understanding that the City would engage an outside consultant to administer the program. The City did not solicit bids for a consultant to administer the UBI program. The City Council directed staff to negotiate a contract with Corazon without soliciting bids after staff was unable to identify other firms with the required expertise. The City Council made a governmental decision regarding whether to solicit bids for a consultant to administer the UBI program and decided not to solicit bids. Councilmember Kelley did not participate in this decision.

Without soliciting bids, the City received a proposal from Corazon to administer the program. On October 4, 2021, staff recommended to the City Council that the City negotiate directly with Corazon to administer the program. Due to councilmember Kelley's financial interest in a contract with Corazon, she recused herself from the October 4th item.

The consultant that administers the UBI program will manage outreach, eligibility screening, and enrollment and will work with program participants to complete the full intake process that includes making a holistic assessment that centers the full range of family needs in

² You note that Councilmember Kelley last received income from Corazon on June 14, 2021, and that some decisions may occur after June 14, 2022. Under the Act, an official has a potentially disqualifying interest in any source of income in the 12 months prior to the decision. Accordingly, Councilmember Kelley will not have an economic interest in Corazon as a source of income after June 14, 2022. However, we caution that all future decisions must be analyzed on a case-by-case basis to determine the potential financial effect on any other interest Councilmember Kelley may have, including the councilmember's interest in her prior consulting work for Corazon. To the extent a decision may implicate the likelihood of additional work for Councilmember Kelley as a consultant, the councilmember should seek additional advice identifying the specific decision before the City.

order to match them with the services through both direct and indirect referrals. City staff will work with community partners to ensure and track that referrals are effectively executed and implemented with partners such as Alliance Medical Center and Reach for Home.

As part of the intake process, the consultant will issue the guaranteed income payments, regularly monitor and report on expenses and participate in evaluation. Income payment will be issued on a monthly basis to program participants through a 12-month pilot period. The evaluation team will work with the consultant during the design and implementation process to ensure proper evaluation measures are integrated into the programming so that data collection during and analysis after program completion can be achieved effectively. The purpose of the evaluation will be to contribute to the growing body of knowledge about guaranteed income programs that are taking root across the country.

The City Council will likely need to make several additional decisions regarding the UBI program, which could include whether to award the contract to Corazon; whether to allocate additional funds to the UBI program; what the specific details of the program will be; how long the program will continue; and whether to solicit funding from other external sources for the program. These discussions could continue well past June 14, 2022.

City staff has met with Corazon regarding program details and is presently awaiting a revised scope of work that will form the basis of a contract for services. That contract will require the City Council's approval.

ANALYSIS

A. The Act.

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

As a City Councilmember, Ms. Kelley is a "public official" subject to the Act's conflict of interest provisions. (Sections 87100; Regulation 18700(c)(1).) She would also be making, participating in making, or influencing governmental decisions under the Act when taking part in the City's decisions regarding a contract with Corazon. (See Regulations 18702.1-18702.3.)

Section 87103 sets forth the interests from which a conflict of interest may arise under the Act. The circumstances here involve the following economic interests:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more. (Section 87103(a).)
- Any 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 \$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).) Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Section 82030(a).)

According to the facts provided, Councilmember Kelley left employment with Corazon in 2020 but was subsequently hired as a consultant and received income as a consultant until June 14, 2021. Based on these facts, and assuming income of \$500 or more in the 12 months prior to the decision, Councilmember Kelley has financial interest in her consulting business as a business entity and source of income. In addition, as a consultant, she has an interest in sources of income to her business entity, which include a source of income interest in Corazon.

1. Foreseeability and Materiality.

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. An official's financial interest is explicitly involved in a decision, and is presumed to be reasonably foreseeable, if the interest is a named party in, or the subject of, a decision before the official or the official's agency. (Regulation 18701(a).) For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

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

2. Financial Interest in Corazon.

Here, the governmental decisions include decisions regarding Corazon's contract with the City and the program that will be implemented by Corazon under the contract. At this time, the facts provided indicate that the City is negotiating exclusively with Corazon which is thus explicitly involved in the decisions at issue because it is the named party in, or subject of, the decisions. Under the applicable regulations cited above, it is reasonably foreseeable that these decisions will have a material effect on Corazon. Thus, Councilmember Kelley is prohibited under the Act from taking part in decisions involving Corazon and must recuse herself from decisions under the recusal requirements set forth in Regulation 18707, which require a public identification of the interest and leaving the room for the duration of the decisions and discussions by the City Council.

In light of the conclusion that Councilmember Kelley is disqualified from the decisions due to the financial effect on her interest in Corazon, we do not further analyze the potential effect on her consulting work for Corazon. However, we note that all decisions must be analyzed on a case-by-case basis. Even to the extent the councilmember does not receive income from Corazon in the 12 months prior to the decision, Councilmember Kelley must consider the potential financial effect on all interests she may have prior to taking part in the decisions, including her interests in her consulting work for Corazon. To the extent decisions regarding Corazon occur after June 14, 2022, and may implicate the likelihood of additional work for Councilmember Kelley as a consultant, the councilmember should seek additional advice prior to taking part in decisions involving Corazon and identifying the specific decision at issue before the City.

B. Section 1090.

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) Section 1090 concerns 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.) “[A]n official has a financial interest in a contract if he might profit from it.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) 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.)

Under Section 1090, Councilmember Kelley is required to complete her business relationship with Corazon before participating in the making of a contract between the City and Corazon. (See Ops.Cal.Atty.Gen. 187 (2003) (finding there would be no financial interest under Section 1090 “if the board member first terminates his business relationship with the firm”).) Because Councilmember Kelley does not currently have a business relationship with Corazon, she has no interest in Corazon’s contract with the City for purposes of Section 1090. Accordingly, while she may not take part in the decision under the Act, Section 1090 does not prohibit the City from entering the contract.

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

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:dkv