



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 6, 2025

Elizabeth Martyn
General Counsel
Big Bear Airport District
2855 East Guasti Rd., Suite 402
Ontario, CA 92761

Re: Your Request for Formal Advice
Our File No. A-25-034

Dear Ms. Martyn:

This letter responds to your request for advice regarding 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. We also offer no advice regarding any prohibitions on incompatible offices or incompatible activities, as the prohibitions fall outside of the Act and Section 1090.

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 San Bernardino 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 the Big Bear Airport District and City of Big Bear contract with one another—specifically for the lease of a District building by the City Fire Authority—given that a member of the Big Bear Airport District is also a member of the Big Bear City Council?

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 18104 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

Yes, the City of Big Bear and Big Bear Airport District may contract for the lease of a District building by the City Fire Authority, provided the Board/Council Member's non-interest in the contract is disclosed to each agency and the non-interest is noted in each agency's records.

FACTS AS PRESENTED BY REQUESTER

The Big Bear Airport District Board Member Chuck Hicks was recently elected to the Big Bear City Council. The boundaries of the two districts overlap. A question has arisen as to whether the City salary and reimbursements received by Councilmember Hicks creates a conflict of interest in voting on a matter in the Airport District agenda regarding the City. The agenda item is a potential lease agreement between the District and the City for the use of a District building by the City Fire Authority. The Fire Authority is composed of the City Council and other members, and Board Member Hicks is the Vice President of the Fire Authority.

The District may be pursuing an incompatibility opinion from the Attorney General if the board member does not resign, but one of the District board members also asked if there is a potential conflict based on the compensation the board member has received from the City. In addition to the stipend he receives as a city councilmember, he also has received more than \$25,000 in attorney fees from litigation he brought against the City based on his residency.

In a follow-up email, you clarified that Board Member Hicks did not request this advice letter, which was instead requested by the Airport Manager and another Airport District Board Member.²

ANALYSIS

The Act

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official's position to influence a governmental decision in which the official knows or has reason to know the official 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 the official's immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests is "[a]ny source of income . . . 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).)

² Our advice is provided for the sake of the Airport District determining its responsibilities and liabilities as a governmental agency, as governmental decisions made by the Airport District may be invalidated if made in violation of the Act or Section 1090. (See Section 91003; see also *Thomson v. Call* (1985) 38 Cal.3d 633, 646-649 [a contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties].)

In defining the term “income,” the Act includes “payment of indebtedness received by the filer.” (Section 82030(a).) The definition excludes “[s]alary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency . . .” (Section 82030(b)(2).) Consequently, the salary and benefits Board Member Hicks receives as a member of the Big Bear City Council do not constitute “income” for purposes of the Act. However, the attorney’s fees Board Member Hicks received from the City do not fall under the government salary exception and, therefore, he has a source of income interest in the City.

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).”

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.”

Under Regulation 18703(e)(7), an official with a source of income interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on the official. (Regulation 18702.3(d).)

Here, a potential lease agreement between the District and the City for the use of a District building by the City Fire Authority would not have a unique effect on Board Member Hicks. Therefore, under the Act, Board Member Hicks is not disqualified from taking part in the leasing decisions involving the Airport District and the City.

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. 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.)

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091, or a "noninterest," as defined in Section 1091.5.

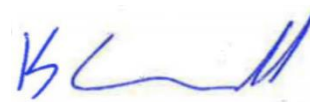
Under Section 1091.5, an officer or employee is not considered to have a financial interest in a contract if his or her interest is that of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government 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).) When the official in question is a member of the governing board, and not a member of a "department" of the agency, the official would have a non-interest in the contract between the two agencies. For example, a member of a county board of supervisors who also serves as a member of a children and families commission has a non-interest in contracts between the two agencies because the "department" limitation does not apply. (See *Conflicts of Interest*, Office of the Attorney General (2010), p. 75.) Because the officer at issue here is a member of the governing board of both agencies at issue here, and the contract does not pertain to a particular department, the "department" limitation of Section 1091.5(a)(9) does not apply. Consequently, as long as his interest is disclosed to the agencies at the time of consideration of the contract and noted in the agencies' respective records, the two agencies may contract with one another and Board Member Hicks may take part in the contracting process.

If you have other questions on this matter, please contact me at kcornwall@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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