



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 25, 2025

Mark Paxson
Deputy Chief Counsel
California Cradle-to-Career Data System
400 R Street, Suite 140
Sacramento, CA 95811

Re: Your Request for Advice
Our File No. A-25-107

Dear Mr. Paxson:

This letter responds to your request for advice on behalf of Cradle-to-Career Data System (“C2C”) Board Member Christopher Nellum regarding 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 Sacramento 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, does Board Member Nellum’s employment with EdTrust West, a 501(c)(3) organization, give rise to a financial interest in a contract between his agency, C2C, and an entity, if that entity also provides grant funds to EdTrust West?

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

No. Under the Act, Board Member Nellum does not have a financial interest in the contemplated agreements solely due to his employment with EdTrust West, and he is not prohibited, as a C2C Board member, from participating in making agreements with entities that have also provided funding to EdTrust West. Based on the facts as presented, Section 1090 is not applicable to the potential grants, as Board Member Nellum would not have a financial interest in the contemplated agreements solely due to his position and source of income with a non-profit that also received grant funds from the entities.

FACTS AS PRESENTED BY REQUESTER

C2C, housed within the Government Operations Agency, is the state entity responsible for developing a longitudinal data system that provides comprehensive data provided by numerous state departments, schools, and universities. The purpose of this data system is to provide easier access to researchers and members of the public, including parents and students, looking for information on career pathways.

C2C is governed by a 21-member board. Board Member Nellum is a Governor's appointee to the C2C Governing Board. In his private capacity, he serves as the Executive Director of EdTrust West – a 501(c)(3). In a follow-up email, you confirmed that Board Member Nellum receives compensation for his role as the Executive Director of EdTrust West, which totals \$500 or more, within any 12-month period. You provided the mission statement from their website to provide background on the nonprofit:

EdTrust-West is committed to dismantling the racial and economic barriers embedded in the California education system. Through our research and advocacy, EdTrust-West engages diverse communities dedicated to education equity and justice and increases political and public will to build an education system where students of color and multilingual learners, especially those experiencing poverty, will thrive.

C2C is in the process of identifying philanthropic opportunities to help fund C2C's activities. It is possible that some of the organizations C2C will reach out for grants or other types of funding have also provided financial support for projects operated by EdTrust West. In a follow-up email, you stated that you believe some of the entities that provide grant funding to EdTrust West are also non-profit organizations (foundations, for instance), but some may be for-profit, and that you do not believe any of them are affiliates of EdTrust West. If C2C is successful in obtaining philanthropic funds, the result will likely be grant agreements, or some other types of contracts, that govern the use of the funds.

You also state that C2C's fundraising efforts are at a very early stage, so that potential contributors have not yet been identified. However, you confirmed with Board Member Nellum that none of the potential contributors to C2C have provided a large percentage of EdTrust-West's budget, EdTrust-West is not dependent upon any of the entities that may also provide funds to C2C, none of the entities that may provide grants to C2C have control over EdTrust-West, and that funds provided by these entities to EdTrust-West are not earmarked to provide compensation to Board Member Nellum in his capacity as Executive Director.

ANALYSIS

The Act's conflict of interest rules prohibit a public official from making, participating in making, or using an official position in any way to influence a governmental decision in which the official knows, or has reason to know, that the official has a "financial interest." (Section 87100.) A public official has a financial interest in a decision within the meaning of Section 87103 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 any one of five enumerated economic interests. (Section 87103.) Section 87103 defines the interests from which a conflict of interest may arise. As pertinent to your inquiry, these interests include:

- Any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- The official's personal expenses, income, assets, or liabilities, as well as those of the official's immediate family. This is commonly referred to as the "personal financial effects" rule. (Section 87103.)²

You have indicated that Board Member Nellum serves as the Executive Director of EdTrust West, and that he receives compensation for these services. As such, Board Member Nellum has an interest in EdTrust West as a source of income.³

Foreseeability and Materiality

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. The standard for foreseeability differs depending on whether an interest is "explicitly involved" in the decision as a named party or subject of a government decision. (Regulation 18701.) Under your facts, Board Member Nellum's employer, EdTrust West, would not be a named party or the subject of the grant agreements at issue. Regulation 18701(b) provides the foreseeability standard for decisions where the financial interest is "not explicitly involved." "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."

² Under Regulation 18702.5(a), "[a] governmental decision's reasonably foreseeable financial effect on a public official's financial interest in 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." There are no facts to suggest a personal financial effect, and we do not further analyze this interest.

³ Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. As a nonprofit entity, EdTrust is not a "business entity" as defined in Section 82005. Therefore, Board Member Nellum's position as the Executive Director of EdTrust West does not give rise to a financial interest in a business entity.

Regulation 18702.3(a)(3) provides the applicable materiality standard for a nonprofit source of income not explicitly involved in a decision. It requires the examination of three areas of possible impacts on the nonprofit entity as a result of the decision: annual gross receipt or asset/liability changes, changes to expenses, and impacts on a real property interest. For the first category, the financial effect is material if the decision may result in an increase or decrease of the nonprofit organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or greater than \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is at least \$10,000. (Regulation 18702.3(a)(3)(A).)

For the second, the effect is material if the decision may cause the entity to incur or avoid additional expenses, or to reduce or eliminate expenses, in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).)

For the third, the financial effect is material if the organization has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)

The facts presented contemplate an agreement solely between C2C and one of the entities that also provides funding to EdTrust West. Although Board Member Nellum has a financial interest in EdTrust West, there is nothing to suggest a foreseeable financial effect on EdTrust West in the event C2C enters into an agreement to receive grant funds from an entity that also provided funding to EdTrust West. Therefore, based on the facts presented, the Act does not prohibit Board Member Nellum from participating in the making of agreements between C2C and entities that also provide funding to EdTrust West, where EdTrust West itself is not involved in the agreement. Please seek additional advice, as needed, if there is a foreseeable financial effect on EdTrust West related to a decision.

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.” 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.) Where a prohibited interest is found, the affected contract is “void from its inception,” regardless of “whether the terms of the contract are fair and equitable to all parties.” (*Thomson v. Call* (1985) 38 Cal.3d 633, pp. 646-649.) 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.) Virtually all board members, officers, and employees are public officials within the meaning of section 1090. (See, e.g., *Thomson v. Call*, *supra*.)

It is not disputed that Board Member Nellum is subject to Section 1090 in his capacity as a C2C board member. However, as a threshold issue, for Section 1090 to apply, the public official in question must have a financial interest in the contract in question. Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or

the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson v. Call*, *supra*, at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

An official has a financial interest in a contract only when there is a sufficient connection between the contract in question and an interest held by the official. Under this formulation of “financial interest,” it would be a clear Section 1090 conflict of interest if any of the C2C board members had a financial relationship with, or interest in, a contracting entity. Under these unique facts, where there are no other facts indicating another type of relationship, Board Member Nellum would not have a financial interest in a C2C grant agreement as contemplated by Section 1090 simply because the nonprofit that employs him also receives grant funds from the same entity. Based on the limited facts provided, we conclude that Section 1090 would generally not apply in this context. Barring additional facts, Section 1090 does not prohibit Board Member Nellum from making or participating in, or C2C from entering into, a grant agreement to receive funds from entities that have provided funding to EdTrust West. However, you may wish to seek further advice when a specific funding agreement involving one of the entities that also provides funding to EdTrust West is identified.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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