



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 4, 2025

Kristen M. Rogers,  
Olson Remcho  
555 E. Ocean Blvd, Ste. 420  
Long Beach, CA 90802

Gary S. Winuk,  
Kaufman Legal Group  
777 S. Figueroa Street, Suite 4050  
Los Angeles, CA 90017

Re: Your Request for Advice  
**Our File No. A-25-115**

Dear Ms. Rogers and Mr. Winuk:

This letter responds to your request for advice on behalf of the San Diego Unified Port District (“District”) and former District Commissioner Chair, Mr. Rafael Castellanos, regarding the Political Reform Act (“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 San Diego 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

Does the Act or Section 1090 prohibit former District Board Commissioner Castellanos from representing and advising Lane Field Developers for compensation in their new proposal to

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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 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.

the District regarding certain parcels located at 1220 Pacific Highway under its 2014 First Right to Negotiate?

### **CONCLUSION**

Yes. Because Mr. Castellanos was a District Board member in 2014 when Lane Field Developers' First Right to Negotiate contract with the District was formed, he participated in the formation of the contract - as well as in later deliberations and decisions regarding the rights under the contract - and Section 1090 prohibits him from subsequently acquiring a financial interest in the contract as Lane Field Developers' attorney.

### **FACTS AS PRESENTED BY REQUESTER**

The District is a specially created public district. It manages San Diego Bay and 34 miles of waterfront. The District was established in 1962 and has five member cities; Chula Vista, Coronado, Imperial Beach, National City and San Diego.

Management of the District is entrusted to seven appointed commissioners, who form the Board of Port Commissioners ("Board"). One commissioner is appointed by each of the city councils of Chula Vista, Coronado, Imperial Beach and National City, and three commissioners are appointed by the San Diego City Council. The Board establishes policies under which the District's staff conducts its daily operations. The District Board regularly considers and votes on the approval of many types of contracts and agreements between the District and various public and private entities.

Former District Board Chair and Commissioner Rafael Castellanos is currently a partner at Solomon, Minton, Cardinal, Doyle and Smith LLP, a San Diego law firm. He served as a District Commissioner from 2013 through 2024. Mr. Castellanos is currently considering whether to represent Lane Field Developers ("Lane Field") for compensation in connection with a transaction with the District.

#### *The District & the Property*

In 2014, the District Board approved an option to lease with Lane Field covering certain property owned by the District upon which Lane Field developed a hotel. The District Board also approved a First Right to Negotiate with Lane Field, which gave it various rights to propose to develop on another District-owned property site located at 1220 Pacific Highway (the "Property"), if and when the District regained possession of this property, which was, at the time, leased to another tenant. This agreement gave Lane Field a specified time to propose to develop all the regained parcels. If the District rejected that proposal, another right to propose on the two parcels directly adjacent to Lane Field's current hotel leasehold would be triggered.

The District regained the rights to the Property, which triggered Lane Field's rights under the First Right to Negotiate. In December 2023, in closed session, the District Board discussed Lane Field's First Right to Negotiate. At the January 2024 open session meeting, the District Board voted to extend Lane Field's time to make a proposal under the First Right to Negotiate. Mr. Castellanos

was on the Board for these actions. Mr. Castellanos stepped down from the Board on January 25, 2024.

After Mr. Castellanos left the Board, Lane Field submitted a proposal that encompassed the whole Property site. The District rejected this proposal. In accordance with the First Right to Negotiate, Lane Field now has the right to make a new proposal that only relates to a portion of the Property site. Subsequently, in May 2025, the District Board extended the time for Lane Field to submit such new proposal. Mr. Castellanos would like to advise and represent Lane Field on the terms of their new proposal related to a new project on a limited portion of the Property.

### ANALYSIS

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of their respective agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) 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.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

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.) An official “makes” a contract if the official participates in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, planning, drawing of plans and specifications. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft, supra*, 58 Cal.2d at p. 569.) Additionally, Section 1090’s prohibition extends to prohibit an official from subsequently acquiring an interest in a contract the official has previously participated in making. (See, e.g., 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

When board members have the power to execute contracts, participation is constructive. Thus, where an official is a member of a board or commission that has the power to execute the contract, the member is conclusively presumed to be involved in the making of their agency’s contracts, irrespective of whether the member actually participates in the making of the contract. (*Thomson v. Call, supra* at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen 49, *supra*.)

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. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Prohibited financial interests are not limited to express agreements for benefit and need not be proven by direct evidence, and extend to expectation of benefit by express or implied

agreement and may be inferred from the circumstances. (*People v. Honig, supra* at p. 315.) The concern is “with any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the [state].” (*Stigall v. City of Taft, supra*, 58 Cal. 2d at p. 569.)

The Attorney General has previously found that an attorney has a financial interest in a contract in which the attorney’s client is interested. (101 Ops. Cal. Atty. Gen. 1, p. (2008), p. 18.) And, as a result, the official violates Section 1090 by participating in the formation of a contract on behalf of the agency where the official is also an attorney for a contracting party whose interests are adverse to the agency. (*Ibid.*) The Attorney General’s opinion states that the attorney-board member would “stand to profit from [the contract], whether directly (from payment received for representing the client in connection with the contract), or indirectly (such as from ‘prestige, publicity, and goodwill associated with any success’ in the representation).” (*Id.*, p. 20.) Additionally, the opinion finds that the two exceptions applicable to an attorney of the contracting party, Sections 1091(b)(6) and 1091.5 (a)(10), apply where the representation of the client is in other, unrelated matters, not in a contract before the official’s agency. (*Id.*, p. 20 and fn. 76.)

Mr. Castellanos will have a financial interest in any contract between Lane Field and the District, in the event that he is acting as Lane Field’s attorney in the matter. In his role as a former District Board Commissioner, Mr. Castellanos participated in contractual decisions in 2014 granting Lane Field’s “First Right to Negotiate” rights regarding proposing development of the Property and participated in later decisions regarding those rights, including the extension of time to submit its first proposal. The facts state that the current development proposal Lane Field wishes to submit is also under its First Right to Negotiate. Therefore, Mr. Castellanos participated in the contract that established the First Right to Negotiate and would violate Section 1090 if he were to acquire a financial interest in the contract. Since Section 1090 prohibits Mr. Castellanos from representing Lane Field in this matter, we need not further discuss whether Mr. Castellanos is prohibited from representing Lane Field under the Act, including the Act’s revolving door provisions.<sup>2</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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<sup>2</sup> See Section 87406.3 and Regulation 18746.3.