



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

December 19, 2025

Josh G. Varinsky
City Attorney
City of Ione
1608 T. Street
Sacramento, CA 95811

Re: Your Request for Advice
Our File No. A-25-155

Dear Mr. Varinsky:

This letter responds to your request for advice on behalf of Stacy Rhoades, Mayor of the City of Ione (“City”), regarding the conflicts of interest provisions of the Political Reform Act (“Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under 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 Amador 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. Under the Act, does Mayor Rhoades have a disqualifying interest in the City’s easement agreement with Amador Water Agency (“AWA”), due to his employment with US

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.

Mine, where the purpose of the easement is to facilitate AWA's backwash water pipeline to US Mine?

2. Does Section 1090 prohibit the City from entering into the easement agreement with AWA?

CONCLUSIONS

1. Yes, it is reasonably foreseeable that the decision would have a material financial effect on US Mine because the purpose of the easement is to facilitate AWA's pipeline to Mayor Rhodes's employer. He is disqualified from taking part in this decision as detailed below.

2. Because the City is the property-holder and thus the only entity able to make this decision, and the easement would enable the City to fulfill as an essential duty of facilitating water for its residents, under the rule of necessity, the City may make the easement agreement with AWA, so long as Mayor Rhoades recuses in accordance with the Act and Section 1090.

FACTS AS PRESENTED BY REQUESTER

The City of Ione is a general law city located in Amador County ("County"). The Amador Water Agency ("AWA") is a county water district that provides water service to residents and businesses in the County. AWA owns and operates water treatment, storage, and conveyance facilities throughout the County.

US Mine Corporation (US Mine") is a mining and exploration company located in the County's jurisdiction, south of the City's limits. US Mine mines and produces various minerals (such as clay, silica, and ilmenite) for use in many types of consumer and commercial products. US Mine provides products to customers within and beyond the United States and has annual revenues in the hundreds of millions of dollars.

Stacy Rhoades is the City's Mayor. Mayor Rhoades is a salaried employee of US Mine. Mr. Rhoades' position with US Mine is the Director of Planning and Maintenance, who reports to the Chief Executive Officer of US Mine. Mr. Rhoades oversees a number of operations, including facility maintenance, inspections, safety, and water quality requirements. Such duties more specifically include coordinating with affected public agencies and utility providers; ensuring compliance with state and federal safety requirements; overseeing maintenance of mineral processing plants, water facilities, and related equipment; and management of employees and contractors.

Ione Water Treatment Plant Reliability Capacity and Backwash Piping Project

AWA owns and operates a water treatment plant for the City, located in the northern area of the City, known as the Ione Water System. The Ione System utilizes the Ione Water Treatment Plant (Ione WTP) and a potable distribution system to serve potable water to the City and the Mule Creek Correctional Facility. AWA has identified several issues with the Ione WTP. In addition to aging infrastructure, the AWA currently lacks capacity for new water connections

and plans to undertake projects that will provide further water capacity for anticipated population growth in the County. One project under consideration is the Ione WTP Reliability Capacity and Backwash Piping Project (“Project”). The Project involves sending backwash water from the AWA water treatment plant by pipeline through the City to the US Mine facility located south of the City limits. AWA and US Mine have an agreement that AWA will deliver the backwash water and US Mine will store and use the water. AWA requires a pipeline easement from the City to route the pipeline through Howard Park. It also may require easements from private property owners to complete the construction.

AWA’s Backwash Agreement with US Mine

The US Mine property is over 5,000 acres. US Mine plans to store and reuse the backwash water as part of its industrial water system. US Mine has large onsite ponds supplied by rainwater that hold substantial quantities of water for ongoing use in its mining operations. During summer months the ponds hold approximately 189,078,301 gallons of water, while during the winter months the ponds hold approximately 826,573,198 gallons of water. As stated in the Mitigated Negative Declaration for the Project (“MND”), the Project would include the construction of a new backwash handling 6” pipeline that will run from the Ione Wastewater Treatment Plant for approximately 1.3 miles to the US Mine property. One potential use of the backwash water is for dust control during mining operations.

There is a written agreement between AWA and US Mine for the delivery and acceptance of the backwash water (“Backwash Agreement”). As explained in the Backwash Agreement, AWA is responsible for all Project costs. The Backwash Agreement provides that US Mine will use the backwash water for its “reasonable and beneficial use.” The Backwash Agreement further provides that the consideration to US Mine is the “storage and use of the water.” The Backwash Agreement does not specify the exact water quantity to be delivered to US Mine, but states that AWA produces approximately 75,300 gallons per day of backwash water, and that this figure is expected to increase. The Backwash Agreement provides no other tangible financial benefits to US Mine in exchange for accepting, storing, and reusing the backwash water from AWA. The City is not a party to the Backwash Agreement between US Mine and AWA.

AWA’s Pipeline Easement with the City

For continued implementation of the Project, AWA requires a pipeline easement from the City. The location of the easement would be through Howard Park, a local and regional park owned by the City. Routing the Project pipeline through Howard Park is a cost-effective way to deliver the backwash water to US Mine. Alternate routes for the pipeline would make the Project substantially more expensive by requiring acquisition of property rights, excavation of existing roads, and building a longer pipeline. AWA has determined that routing the pipeline through Howard Park is the best way to implement the Project. The City is interested in facilitating the Project by granting an easement through Howard Park to AWA because of the many benefits to City residents, such as lower water infrastructure costs, lower water rates, and faster construction timelines.

The Mayor had no involvement in the Backwash Agreement between AWA and US Mine. You also state you do not believe the Project will result in a financial benefit to US Mine. US Mine does not require the backwash water in its mining operations. US Mine has abundant water on its property that meets the demands of its mining operations. The Project is a regional project that provides general benefits to County residents and businesses – such as freeing up capacity in the AWA water system, allowing for sustainable reuse of contaminated backwash water, and keeping water rates low for residents and businesses. Further, US Mine is not an industrial customer of AWA water. US Mine has a standard water connection to the AWA system for domestic use (for potable water and plumbing uses), but all industrial water for mining operations comes from the onsite lakes supplied by rainwater. However, the Backwash Agreement expressly specifies that US Mine will use the backwash water for its “beneficial use.”

As this is a regional County project with many benefits, the affected parties (AWA, US Mine, and the City) seek to accomplish and facilitate the Project through cooperation and agreements, in order to avoid unnecessary and costly eminent domain proceedings. An easement agreement between AWA and the City is anticipated to be presented to the City Council in the near future.

ANALYSIS

The Act

The Act’s conflict of interest provisions prohibit a public official at any level of state or local government from making, participating in making, or in any way attempting to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. (Section 87100.) A public official has a financial interest in the decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official’s financial interests, distinguishable from the decision’s effect on the public generally. (Sections 87100 and 87103.)

Regulation 18704 defines “making, participating and influencing” a governmental decision as any of the following activities:

- *Making a Governmental Decision:* A public official “makes a governmental decision” when the official “authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency.”
- *Participating in Making a Governmental Decision:* A public official “participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.”
- *Influencing a Governmental Decision:* A public official “‘uses an official position to influence a governmental decision’ if the official contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision.’ A public official also ‘uses an official position to influence a governmental decision’ if the official contacts or appears

before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact.”

The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and, relevant to these facts, include:

- An interest in a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in a source of income to the official or promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

Mayor Rhoades has an interest in US Mine as a business entity and as a source of income interest due to his salaried position as the company's Director of Planning and Maintenance.

Foreseeability and Materiality

At issue is whether it is reasonably foreseeable that the City's pipeline easement agreement decisions with AWA related to the Project will have a material financial effect on Mayor Rhoades' financial interests in US Mine.

Regulation 18701(a) provides the 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).

To determine the material effect of the decisions on a business entity, we look to the standard set forth in Regulation 18702.1.² Applicable to these facts, Regulation 18702.1(a)(1)(G) states that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business is material if the business is “the subject of the action taken by the agency that is directed at the entity.”

The sole reason for the City's easement agreement with AWA is to facilitate AWA's cost-effective delivery of the backwash water to US Mine. The easement decision is a part of the regional County project that involves “the affected parties (AWA, US Mine, and the City)” and

² The materiality standard for a business as a source of income is also Regulation 18702.1. (Regulation 18702.3(a)(4).)

effectuates the mutually beneficial Backwash Water Agreement between AWA and US Mine. While US Mine has other options for water, it has entered into contract to receive and use this water for its “beneficial use.” Therefore, US Mine is the subject of the action taken by the City that is directed at facilitating the pipeline to US Mine, and it is reasonably foreseeable that the decision will have a material financial impact on US Mine. The Act prohibits Mayor Rhoades from making, participating in making, or influencing the City Council’s easement decision. He must recuse himself by publicly identifying his financial interest in US Mine prior to any agenda item on the easement and leave the room. (Regulation 18707.)

Section 1090

Section 1090³ generally prohibits public officers or employees, 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 contract terms are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 239, citing *Stigall, supra*, at p. 569.) Importantly, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is typically precluded from entering into the contract. (*Id.*; see also *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

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.) 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. Vallergera* (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).)

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

³ Section 1090 is a separate body of law regarding decisions involving a contract and requires a separate analysis.

1091, or a “noninterest,” as defined in Section 1091.5. Where a remote interest is present, the contract may be lawfully executed provided (1) the officer discloses his or her financial interest in the contract to the public agency; (2) the interest is noted in the public body’s official records; and (3) the officer completely abstains from any participation in the making of the contract. (Section 1091.) Where a noninterest is present, the contract may be executed without the abstention. (Section 1091.5.) However, none of these exceptions apply to these facts.

In limited circumstances, the rule of necessity has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (*Dietrick* Advice Letter, No. A-15-174; 88 Ops.Cal.Atty.Gen. 106, 110 (2005).) The California Supreme Court has stated, “[t]he rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so (*Eldridge v. Sierra View Local Hospital Dist.*, *supra*, 224 Cal.App.3d at pp. 321-322; see *Olson v. Cory* (1980) 27 Cal.3d 532, 537 . . .), but it requires all conflicted members to refrain from any participation.” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1097.) The Attorney General states that “the rule of necessity is to reflect actual necessity after all possible alternatives have been explored” (69 Ops.Cal.Atty.Gen. 102 (1986), p. 109, fn.6) and, the “mere fact that a proposed arrangement might be more convenient is not sufficient to involve the rule of necessity.” (4 Ops.Cal.Atty.Gen. 264 (1944).)

The rule of necessity has been applied in at least two specific types of situations: 1) in procurement situations for essential supplies or services when no source other than the one that triggers the conflict is available; and 2) in non-procurement situations to carry out essential duties of the office when the official or board is the only one authorized to act. The effect of the rule of necessity is to permit a board with a member who is financially interested to make the contract, even though the interested board member must disqualify themselves from participating in its making. (See “Conflicts of Interest,” California Attorney General’s Office, 2010, p. 78.)

We have considered whether the rule of necessity applies to allow a governing body to acquire property rights when the landowner is a member of that body. In *Schons* Advice Letter, No. A-16-180, we advised a water district that the rule of necessity permitted its board to negotiate a resolution of various easement and related property access claims with the landowner/board director so that the water district could “properly access its property containing the tank site and the wastewater treatment plant.” We advised that obtaining the access would “unquestionably provide essential services to the community and resolve ongoing easement and related property access claims” with the landowner/board director. Similarly, in *Selke* Advice Letter, No. A-25-035, we advised that a water district may purchase a pipeline access easement on land in which the board member had a financial interest, where the easement would allow the district to perform its essential function of providing irrigation water to agricultural parcels, its only alternative was not constructing the pipeline, and the district was the only agency authorized to act in this capacity.

Here, the City is the landowner and the only entity authorized to grant the easement to AWA. The pipeline is part of the Project by which the county agency, AWA, will address City water needs and thus enable the City to facilitate the essential service of water to its residents. We have already determined that Mayor Rhoades must fully disclose his interest in US Mine, and may not take part or use his office to influence this decision under the Act. Therefore, we

advise that under the rule of necessity, the City may enter into the easement agreement with AWA, so long as Mayor Rhoades refrains from any participation and disqualifies himself from the decision. His recusal under the Act will satisfy the Section 1090 recusal requirements.

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

Sincerely,

Dave Bainbridge
General Counsel

L. K a r e n H a r r i s o n

By: L. Karen Harrison
Senior Counsel, Legal Division

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