



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

November 7, 2023

Victoria Hester
Best Best & Krieger LLP
On behalf of Erik Sund, former City Manager of San Clemente
Via email: Victoria.Hester@bbklaw.com

Re: No Action Closure Letter; FPPC No. 2021-00469, In the Matter of Erik Sund

To Whom It May Concern:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the “Act”).¹ As you know, the Fair Political Practices Commission received anonymous complaints alleging that Erik Sund had a conflict of interest in his employment contract for City Manager of City of San Clemente due to his participation in the recruitment process as the Interim City Manager. After an investigation, the Enforcement Division has determined that there is insufficient evidence to sustain the allegation.

Government Code 1090 prohibits officials, including city employees, from participating in the making of contracts in which they have a financial interest. “Participation in the making of a contract” is defined broadly and includes any act involving the planning, preliminary discussions, negotiations, compromises, reasoning, drawing of plans and specifications and solicitation for bids.” (Millbrae Assn. for Residential Survival v. City of Millbrae (1968) 262 Cal.App.2d 222, 237; see also Stigall City of Taft, *supra*, at p. 569.) It would not be a prohibition of 1090 if the official was solely participating in their private capacities. (See Atty. Gen. Opinion 96-1103, wherein two city firefighters are not in violation of 1090 where they are selling a device to the city’s fire department if they are interacting solely in their private capacities.) Officials and employees who participate in the making of the employment contract are prohibited from later accepting that contract as the employee. (See FPPC Advice Letters A-16-213, A16-218, and A-16-220 where three Alternate Board Members for the Southern California Public Power Authority were considered as candidates for Executive Director. If the individuals had participated in the contract for Executive Director, such as weighing in on discussions about the recruitment, deciding on the hiring process, etc., those individuals would be prohibited from later accepting the position.)

The Enforcement Division has determined that there is insufficient evidence that Sund, acting in his capacity as the Interim City Manager, participated in the making of the employment contract. Therefore, we are closing the matter with this letter.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

If you have any questions regarding this matter, please feel free to contact me at (279) 237-5960.

Sincerely,

A handwritten signature in black ink, appearing to read 'Theresa Gilbertson', with a stylized, flowing script.

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division