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

December 19, 2024

Richard Sanchez
[redacted]

Re: No Action Closure Letter, In the Matter of Richard Sanchez, FPPC No. 2023-00462

Dear Richard Sanchez,

The Enforcement Division of the Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act.[1] This letter arises from a commission-initiated investigation regarding an allegation that you, in your capacity as the non-voting member of the Board of Directors for CalOptima, had a conflict of interest in your employment contract when you were appointed as the interim Chief Executive Officer ("CEO") for your agency in 2020. After a review of the available evidence, the Enforcement Division is closing its file in this matter with this letter as discussed below.

In March 2020, CalOptima, a county organized health system, received notice that the current CEO would be resigning at least by May 2020. At the time, you were serving as the non-voting member of the Board of Directors for CalOptima. Between March 12, 2020 and April 2, 2020, contract negotiations occurred between CalOptima and you for a contract to serve as the Interim CEO. On April 2, 2020, the Board approved the employment contract and the contract went into effect on or around April 6, 2020. Upon assuming your new role, you resigned from the Board of Directors.

Members of the Legislature, state, county, district, judicial district, and city officers or employees 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 members.[2] The prohibition on conflicts of interest in government contracts applies to virtually all state and local officers, employees, and multi-member bodies, whether elected or appointed, including CalOptima. For the provision to apply, a contract must be executed, as occurred here. The next step of the analysis is to determine if the individual was making or participating in the making of the contract. For members of a board or commission that has the power to execute the contract, the individual is typically conclusively presumed to be involved in the making of the agency's contracts, irrespective of whether the individual actually participates in the making of the contract.[3]

[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.

[2] Section 1090.

[3] (Thomas v. Call (1985) 38 Cal.3d 633, 645 & 649; Fraser-Yamor Agency, Inc. v County of Del Norte (1977) 68 Cal.App.3d 201; 89 Ops. Cal. Atty. Gen 49 (2006.)

By contrast, when an employee, rather than a board member, is financially interested in a contract, the employee's agency is prohibited from making the contract by Section 1090 only if the employee was involved in the contract-making process. Therefore, as long as the employee plays no role whatsoever in the contracting process (either because such participation is outside the scope of the employee's duties or because the employee disqualifies himself or herself from all such participation,) the employee's agency is not prohibited from contracting with the employee or the business entity in which the employee is interested.[4]

Here, you served as a non-voting member of the Board of Directors. You served as the Director of the Orange County Health Care Agency and therefore you had the role of the non-voting position on the Board.[5] Unlike the other members, you did not have the authority to make final decisions of the Board. In this way, your role was more akin to an employee who provides expertise, information or reports, recommendations, etc. In such unique circumstances, the FPPC has previously advised that some members of Boards can be treated differently for purposes of Section 1090. The FPPC's Legal Division has provided advice to members of the Southern California Public Power Authority ("SCPPA") who served as Alternates on their Board of Directors.[6] The individuals were interested in applying to be the next Executive Director for the SCPPA and had written for advice as to how this conflicts provision, Section 1090, would apply to them. In that case, Legal advised that since the Alternates only had authority to act when they were serving in place of a regular member, the individuals could be treated more like employees when considering whether there would be conflict of interest. Similarly, as the non-voting member, for purposes of determining whether you participated in a contract, there must be evidence that you participated in the planning, negotiating, or making of the contract.

The Enforcement Division has found that there is insufficient evidence that you participated in the contract process in your official capacity. At Board meetings in which the Board discussed the hiring of an Interim CEO, you recused yourself from participating in those meetings. As there is insufficient evidence that you participated in the making of the contract in your official capacity, there is insufficient evidence of a conflict of interest with respect to the April 2, 2020 employment contract. Based on the foregoing, we are closing our case in this matter.

If you have any questions regarding this letter, please contact me at tgilbertson@fppc.ca.gov or by phone at (279) 237-5960.

Sincerely,

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division

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[4] 80 Ops.Cal.Atty.Gen. 41 (1997).
[5] See Orange County Municipal Code, Section 4-11-11, subdivision (d).
[6] FPPC Advice Letters, A-16-213, A-16-218, and A-16-220.