



## FAIR POLITICAL PRACTICES COMMISSION

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March 4, 2014

Pamela J. Walls  
County Counsel  
3960 Orange Street, Suite 500  
Riverside, CA 92501-3674

Re: Your Request for Advice  
**Our File No. C-14-001**

Dear Ms. Walls:

This letter responds to your request for advice regarding the conflicts-of-interest provisions under Government Code section 1090 et seq.<sup>1</sup> Because the Fair Political Practices Commission (“the Commission”) does not act as a finder of fact when it renders assistance (*In re Oglesby* (1975) 1 FPPC Ops. 71), this letter is based on the facts presented.

Please note that after forwarding your request to the Attorney General’s Office and the Riverside District Attorney’s Office, we did not receive a written response from the Attorney General’s office, and the Riverside District Attorney declined to offer any written communication. (*See* Section 1097.1(c)(4).) Finally, we are required to advise you that the following advice is not admissible in a criminal proceeding against any individual other than the requestor. (*See* Section 1097.1(c)(5).)

### QUESTION

Are either Government Code Section 1090 or the Political Reform Act (the “Act”)<sup>2</sup> implicated when the Riverside County Board of Supervisors vote to amend an ordinance that will impact their own salaries?

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<sup>1</sup> All further statutory references are to the Government Code, unless otherwise indicated.

<sup>2</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 18110 through 18997 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. The California Constitution mandates that county supervisors set their own salaries by ordinance, and that duty is not limited by Section 1090 or the Act.

## FACTS

You are County Counsel for Riverside County and write on behalf of the County Board of Supervisors. County Ordinance No. 780 ties the salary rate of Riverside County Supervisors to 80% of a Superior Court Judge's annual salary. Supervisor salaries are increased at such times and in such percentages as any increases granted by law to Superior Court Judges.

On November 27, 2013, the Judicial Council announced a judicial salary increase effective July 1, 2013. Under the terms of Ordinance No. 780, the salaries of the Riverside County Supervisors would have automatically increased but for a provision in that ordinance that states: "Said adjustments shall be made through and including December 2010; no further salary adjustments shall be made subsequent to that date."

Riverside County's Human Resource Department is contemplating returning a proposed amendment to Ordinance No. 780, which would delete the provision prohibiting salary increases after December 2010. The County Supervisors would vote on this change, and would effectively be voting to allow for continued automatic increases to their own compensation. Ordinance No. 780 states that the "Riverside County Board of Supervisors is required by state law to establish its own compensation and to do so by ordinance."

## ANALYSIS

Article XI, section 1, subdivision (b) of California's Constitution, which applies directly to county governments, states in part: "Except as provided in subdivision (b) of Section 4 of this article, *each governing body shall prescribe by ordinance the compensation of its members*, but the ordinance prescribing such compensation shall be subject to referendum." (Emphasis added.) The voters amended this constitutional provision in 1970 to take the power to set county salaries from the hands of the legislature and give it to the counties themselves. (*Meldrim v. Bd. of Supervisors* (1976) 57 Cal.App.3d 341, 343.) In *Meldrim*, the court explained that by allowing the boards themselves to vote on their salaries by ordinance, the public that they serve would have the opportunity to comment on any change in an open meeting. (*Ibid.*) Should the voters object to the salaries, or any changes thereto, the issue is subject to referendum.

Under the cited provision of the California Constitution, "the members of the governing body of the county have the right and the duty to prescribe the compensation of the members." (*Id.* at p. 346.) Given this clear constitutional mandate, neither Section 1090 or the Act are implicated when a county board of supervisors votes to change their salaries because it is well-

established that<sup>3</sup> “[c]onstitutions trump statutes.” (See, e.g. *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal. App. 4th 1182, 1189, citing *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 800-801, fn. 11.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl

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<sup>3</sup> Because it is inapposite to this decision whether voting on an ordinance is a “contract” under Section 1090, we do not analyze that issue here.