



## FAIR POLITICAL PRACTICES COMMISSION

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March 4, 2014

Deepak Moorjani  
5194 Los Altos Drive  
Yorba Linda, CA 92886

Re: Your Request for Advice  
Our File No. A-14-014

Dear Mr. Moorjani:

This letter responds to your request for advice regarding the conflict 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. In addition, we do not render advice based on past conduct. (Section 1097.1(c)(2).)

Please note that after forwarding your request to the Attorney General's Office and the Santa Ana District Attorney's Office, we did not receive a written response from either entity. (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

Do the conflict of interest provisions under Section 1090 prohibit you from entering into an employment contract with the City of Beaumont for the currently unfilled position of City Engineer and Public Works Director?

### CONCLUSION

No. You may enter into an employment contract with the City of Beaumont to become the City Engineer and Public Works Director because, in your current capacity, you are not subject to the provisions of Section 1090.

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

## FACTS

You are a registered civil engineer in the State of California. In 1993, the City of Beaumont awarded a consulting contract for urban planning and engineering services to the firm where you worked and owned 33.3% of the stock. Under that contract, you provided the services of a consulting city engineer and public works director.

In August of 2012, another California firm purchased all of the stock in your company. The terms of the stock purchase agreement ("SPA") included 1) a down payment from the buyer with the balance payable over four years in monthly installments that included interest at 5% per annum; 2) that the sellers (the other two stock holders and yourself) continue to provide the firm with consulting services for a period of 12 months through September 2013; and 3) a "no compete" requirement for a period of five years.

Approximately five months after the date of the purchase, the buyer requested a temporary reduction of the principal repayment for a period of eight months citing cash flow reasons. The difference was to be repaid in eight installments at the end of the original term of 48 months. This reduction was allowed and the term note was amended. Again, in December of 2013, a month before the end of the reduced principal repayment period, the buyer requested an extension of the term note to six years with a greatly reduced interest rate. This, too, was accepted by the note holders with no change to the other terms of the original SPA.

The City of Beaumont is looking to fill the position of City Engineer & Public Works Director. You believe you are qualified for this position and would like to apply for the job. In an attempt to avoid any conflict with the City's present consultant, the buyer of your firm, you requested a waiver of the "no compete" clause in the SPA and that the balance of the note be assigned to a third party. The buyer has agreed to both of these terms in the event you are offered the position by the City of Beaumont.

With respect to the note, you intend to assign it to an individual who is not an immediate family member, a firm in which you have no financial interest, or to one or more charities. You will not seek any type of compensation from any assignee. In addition, your consulting agreement term of 12 months with the buyer ended in September of 2013 so you are no longer providing such services to the City of Beaumont.

## 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 financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. 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.)

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.) 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.)

Normally, we employ a six-step analysis to determine whether an individual has a disqualifying conflict of interest under Section 1090. However, in your case, we need only look to the first step which determines whether you are even subject to the provisions of Section 1090. Section 1090 provides, in part, that “[m]embers 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.” Therefore, Section 1090 applies to virtually all officers, employees, and multi-member bodies at both the state and local level. It also applies to certain consultants and independent contractors.

According to your facts, as co-owner of a firm that contracted with the City of Beaumont to provide urban planning and engineering services, you were a consultant for the city beginning in 1993. Upon the sale of your firm in August 2012, you agreed with the buyer to continue providing consulting services to the city for a period of 12 months. Therefore, as of September 2013, you no longer provide consulting services to the city, and are thus not subject to the provisions of Section 1090 in your current capacity.

We caution, however, that if you do become an employee of the City of Beaumont, you will likely be subject to the conflict of interest provisions set forth in Section 87100 of the Political Reform Act as well as those provisions under Section 1090. We therefore recommend that should you accept city employment, you seek our advice if you have any questions related to these provisions or any other provisions under the Act.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By:   
Jack Woodside  
Senior Counsel, Legal Division

JCW:jgl