



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 1, 2016

Robert M. Burns  
Lassen County Counsel  
221 S. Roop Street, Suite 2  
Susanville, CA 96130

Re: Your Request for Advice  
**Our File No. A-16-223**

Dear Mr. Burns:

This letter responds to your request for advice regarding the conflict of interest provisions of Government Code section 1090 et seq. ("Section 1090").<sup>1</sup> Please note that we do not advise on any other area of law, including Public Contract Code or common law conflicts of interest. We are also 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.

In regard to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General's Office and the Lassen 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).)

You are County Counsel for Lassen County seeking advice on its behalf concerning the conflict of interest provisions under Section 1090 et seq. For approximately 30 years, several Lassen County governmental departments have been purchasing books from a local establishment named Margie's Book Nook. Margie's is bookstore on Main Street in Susanville, and is open to the public for the retail sales of books and other related materials. The gross amount of these government purchases probably totals less than two thousand dollars in any given year.

One of the principals of Margie's Book Nook is Margie's son, David Teeter. In June of 2016, Mr. Teeter was elected to sit on the Lassen County Board of Supervisors. He will be sworn in on January 2, 2017.

Margie's is the only bookstore in Susanville so the various governmental departments would like to continue purchasing books from them. None of the departments has any type agreement with Margie's for the purchase of books. There are simply a series of small purchases made by individual departments as necessary. And the decision as to when to purchase book is made by staff within each department with no input from the Board of Supervisors.

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

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.) 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.)

The present matter is similar to the situation we addressed in the *Hammond* Advice Letter, FPPC No. A-15-134. There, a county supervisor owned a gas station where it was common for county employees to fill the tanks of their government vehicles. We concluded the circumstances in that matter did not raise the type of contractual situation normally covered by Section 1090:

Although as a Supervisor for the County you are subject to the prohibitions of Section 1090, your situation does not raise the type of contractual situation normally covered by those provisions. For example, you do not have, nor are you proposing to negotiate, a contract with the County where it agrees to use your gas station and you agree to provide the gas at a certain rate. Instead, like all members of the general public, County employees make a decision to fill their tanks at your station and the County pays the posted rate. Although the individual transactions that occur at your gas station might be considered contractual in the most technical sense, they are simply not the type of contracts that Section 1090 seeks to preclude.

Like the situation in *Hammond*, the present matter does not involve the type of contractual situation traditionally covered by the provisions in Section 1090. To be sure, there is no contract between the County and Margie’s for the provision of books at a certain rate – nor is either party proposing to negotiate one. And presumably, the series of small purchases occasionally made by county staff, without input from the Board of Supervisors, are made on the same terms and conditions as those made by members of the general public. Therefore, like the purchase of a tank of gas, these limited purchases involve a contract in the most technical sense, but are not the type of contract Section 1090 seeks to prevent.

Accordingly, Section 1090 does not prohibit Lassen County employees from purchasing books at Margie’s Book Nook.<sup>2</sup>

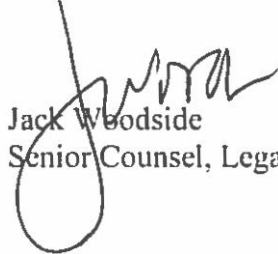
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<sup>2</sup> We note that in addition to Section 1090, conflict of interest provisions in Section 87100 of the Political Reform Act (the “Act”) prohibit a public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has an interest. As applied to the facts you have provided, there is no indication that Mr. Teeter would be making, participating in making, or influencing a decision (see Regulation 18704) merely because a County official has purchased books from his business. Accordingly, the Act’s conflict of interest provisions would not apply so long as the County official has independently decided to purchase books from his business. We caution, however, that he should not attempt to solicit additional business from the County or County officials.

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

Sincerely,

Hyla P. Wagner  
General Counsel

By:   
Jack Woodside  
Senior Counsel, Legal Division

JW:jgl

