



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 15, 2018

Kristin Pelletier, Esq.  
Acting City Attorney  
City of Anaheim  
200 S. Anaheim Blvd., Suite 356  
Anaheim, CA 92805

Re: Your Request for Advice  
Our File No. A-17-230

Dear Ms. Pelletier:

Please note that we are only providing advice under Section 1090, not under other conflict of interest prohibitions such as common law conflict of interest or the Public Contract Code.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

Regarding 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 Orange 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).)

### QUESTION

Does Section 1090 prohibit the City of Anaheim from entering into a contract with Walt Disney Parks and Resorts US, Inc. ("Walt Disney Parks"), given that Councilmember Denise Barnes' husband formerly performed work for the American Broadcast Co., Inc., and ABC is majority-owned by the Walt Disney Company, the parent company of Walt Disney Parks and ABC?

### CONCLUSION

No. The City Council and Councilmember Barnes are not prohibited from entering into a contract with Walt Disney Parks because of the former employment of Councilmember Barnes' husband by ABC.

## FACTS AS PROVIDED BY REQUESTOR

You are Acting City Attorney for the City of Anaheim, and you seek advice on behalf of Councilmember Barnes. Both ABC and Walt Disney Parks are majority-owned by the Walt Disney Company, which is a publicly traded holding company. According to its 2016 Annual Report, the Walt Disney Company operates in four business segments: Media Networks, Parks and Resorts, Studio Entertainment, and Consumer Products and Interactive Media. ABC is in the Media Networks segment. Disneyland and Walt Disney Parks operate in the Parks and Resorts segment. The actual corporate structure is complex. In short:

- ABC is 100% owned by ABC Enterprises Inc.
- ABC Enterprises Inc. is 100% owned by Disney Enterprises Inc.
- Disney Enterprises Inc. is 100% owned by the Walt Disney Company.
- Disneyland is 100% owned by Walt Disney Parks.
- Walt Disney Parks is 99.2% owned by Disney Enterprises Inc.

Councilmember Barnes' husband, Scott Barnes, previously worked for ABC as a crew member on an ABC television show. Mr. Barnes left this position on March 16, 2017. The checks and tax forms received by Mr. Barnes for this work were issued by Disney Worldwide Services, Inc., which is the payroll processor for the various Disney-owned entities and a subsidiary of Disney Enterprises Inc.

## ANALYSIS

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), and officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Id.*) Section 1090 does not specifically define the term “financial interest.” In determining whether a financial interest exists for purposes of Section 1090, courts “generally focus on whether the contract in question could confer some type of pecuniary advantage to the target of a Section 1090 inquiry.” (*Eden Township Healthcare District v. Sutter Health* (2011) 202 Cal.App.4th 208, 225.) Whether a proscribed financial interest exists in a public contract is primarily a question of fact. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 865.)

An official has an interest in the community and separate property income of his or her spouse. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655; 89 Ops.Cal.Atty.Gen. 69 (2006).) A member of a board or commission always has a financial interest in her spouse’s source of income for purposes of Section 1090. (78 Ops.Cal.Atty.Gen. 230, 235 (1995).) Hence, a married official “stands in the shoes of his spouse.” (89 Ops.Cal.Atty.Gen. 258, 264 (2006).)

The facts presented indicate that Councilmember Barnes’ husband ceased employment with ABC approximately one year ago. As such, sufficient time has elapsed to nullify the pecuniary

advantage in governmental contract transactions that Section 1090 was intended to preclude. Thus, Councilmember does not have a financial interest in future contracts between the City of Anaheim and Walt Disney Parks.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Ryan P. O'Connor  
Counsel, Legal Division

RPOC:jgl