



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 30, 2017

Sarah E. Tobias, Esq.  
Goyette & Associates, Inc.  
1330 L Street, Suite G  
Fresno, CA 93721

Re: Your Request for Advice  
**Our File No. A-17-272**

Dear Ms. Tobias:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (“Act”) and Government Code Section 1090, *et seq.*<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. 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 Tulare County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) The District Attorney’s Office’s response is enclosed. 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.” (Section 1097.1(c)(5).)

### QUESTION

Is Councilmember Nunley precluded by either the Act’s conflict of interest provisions or Section 1090 from entering into a private transaction to donate land to the City of Tulare?

### CONCLUSION

No. Based upon the facts provided, Councilmember Nunley’s contemplated land donation is neither subject to the Act’s conflict of interest provisions nor Subject 1090.

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<sup>1</sup> Government Code Sections 1090 through 1097.5. All statutory references are to the Government Code, unless otherwise indicated. 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.

## FACTS AS PROVIDED BY REQUESTOR

Councilmember Nunley was elected to the Tulare City Council in the November 8, 2016 election. Councilmember Nunley, in his private capacity, is also a business owner, land owner, and property developer in the City of Tulare. He holds numerous reportable interests in business entities, sources of income, and properties within the jurisdiction.

The Councilmember is considering donating land to the City of Tulare. This land is valued at approximately \$1,200,000 to \$1,500,000. He wishes to donate this land to the City for the intended purpose of the City building a new fire station on a new signalized corner. Typically, donating real estate results in the donating party receiving a tax deduction in correlation with the donation.

## ANALYSIS

### The Act:

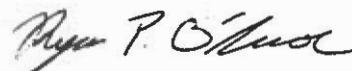
Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has an interest specified in Section 87103. "Governmental decision" means any action taken by a government agency that has a financial effect on any person other than the governmental agency making the decision. (Regulation 18700(c)(2)(B)(4).) According to the facts presented, Councilmember Nunley anticipates making the donation of land in his personal capacity. Thus, the donation does not involve a governmental decision and is not subject to the Act's conflict of interest provisions.

### Section 1090:

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. 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.*) As indicated by the facts provided, the only potential benefit Councilmember Nunley may receive is a tax deduction in correlation to the donation. To the extent that Councilmember Nunley is not receiving any other benefit, the Councilmember is not receiving consideration and the donation does not constitute a contract for purposes of Section 1090. Thus, Section 1090 does not apply to the donation.

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