



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 30, 2018

Michael J. Maurer  
Attorney, CCTA Board  
Best Best & Krieger LLP  
300 South Grand Avenue, 25th Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
Our File No. A-18-091

Dear Mr. Maurer:

This letter responds to your request for advice on behalf of the Contra Costa Transportation Authority Board (the CCTA Board) regarding the conflict of interest provisions of Government Code Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest or the Public Contract Code. Note that we are 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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

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 Contra Costa 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 CCTA Board from entering a contract with GoMentum Station, Inc. (GoMentum) that would entitle GoMentum to the use of grant funds obtained by the CCTA?

#### CONCLUSION

No. Under the facts you have provided, Section 1090 does not prohibit the CCTA Board from entering a contract with GoMentum.

#### FACTS AS PROVIDED BY REQUESTOR

CCTA is a public agency formed by the Contra Costa County voters in 1988 to manage Contra Costa County's transportation sales tax program and oversee countywide transportation planning efforts. CCTA is responsible for maintaining and improving the county's transportation

system by planning, funding, and delivering critical transportation infrastructure projects and programs that connect Contra Costa's communities, foster a strong economy, increase sustainability, and safely and efficiently get people where they need to go.

GoMentum is a non-profit public benefit (501 (c)(3)) corporation located in Contra Costa County. Its purpose is to advance transportation mobility and safety worldwide and build a connected vehicle and autonomous vehicle program at the GoMentum Station Testbed (Testbed) in Contra Costa County, which is a test facility and research center for the benefit of public traffic safety and improved mobility. It is one of the nation's largest secure testing facilities for autonomous and connected vehicle technology.

CCTA entered an existing Memorandum of Understanding (MOU) with GoMentum in November 2016. Through this MOU, GoMentum serves as the primary contractor at the Testbed responsible for entering into agreements for its use and managing the day to day operations. The CCTA provides reasonable assistance and resources to assist GoMentum as necessary.

In July of 2017, the CCTA obtained a grant from the State of California for use in the planning, construction, and operations of an expanded autonomous vehicle testing facility. The CCTA Board is currently considering a draft Cooperative Agreement with GoMentum that would supersede the current MOU and allow GoMentum to use the grant funds to implement the goals and objectives of the grant.

On about March 23, 2018, Randell Iwasaki, the CCTA Executive Director, gave a CCTA Commissioner a document entitled "Principles of Agreement" between GoMentum and AAA NCNU.<sup>1</sup> This non-binding agreement, which contemplated AAA's acquisition of GoMentum's assets and liabilities, included a provision purportedly offering employment to GoMentum principals Randell Iwasaki and Jack Hall. The CCTA Board has no information concerning discussions or negotiations, if any, related to the referenced offers. You note, however, that an updated draft of the "Principles of Agreement" no longer contains employment offers for the two CCTA staff members.

CCTA Deputy Executive Director for Projects, Tim Haile, was the CCTA representative responsible for negotiating the draft Cooperative Agreement with GoMentum. Mr. Haile, who has no affiliation with GoMentum, presented the staff report related to the initial draft Cooperative Agreement to the CCTA Board. Mr. Iwasaki, who is Mr. Haile's direct supervisor, reviewed and commented on the initial staff report concerning the draft Cooperative Agreement at that meeting. You state that the CCTA Board does not know the extent, if any, that Mr. Iwasaki or Mr. Hall provided any information, recommendations or opinions to affect or influence the Cooperative Agreement.

After the CCTA meeting, a CCTA Board subcommittee was formed to review and renegotiate the Cooperative Agreement with GoMentum. The subcommittee independently reviewed the draft Cooperative Agreement, which did not involve any discussions or input from Mr. Iwasaki or Mr. Hall. Deputy Executive Director Haile has been the only staff member to provide information to the subcommittee related to the Cooperative Agreement.

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<sup>1</sup> AAA Northern California, Nevada and Utah.

The subcommittee will be making a recommendation to the full CCTA Board as to whether to approve the Cooperative Agreement. Neither Mr. Iwasaki nor Mr. Hall will be allowed to participate in any extent during any future CCTA Board or subcommittee discussions related to the Cooperative Agreement.

The CCTA is a party only to the Cooperative Agreement, which will be between the CCTA and GoMentum. The CCTA Board's approval and execution of Cooperative Agreement is not contingent on the Principles of Agreement between GoMentum and AAA. However, if the Cooperative Agreement is approved and GoMentum subsequently attempts to assign its assets and liabilities (including the grant funding), the Cooperative Agreement has an assignment clause providing the CCTA Board the authority to approve or disapprove of such assignment. Currently, the only potential action pending for the CCTA Board is approval of the Cooperative Agreement.

### ANALYSIS

#### *Section 1090*

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. City of Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 applies to virtually all state and local officers, employees, and multi-member bodies, whether elected or appointed. 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 critical question in this instance is whether the two specified CCTA staff members have a prohibitory financial interest in the Cooperative Agreement such that Section 1090 would render the contract void. 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. (*Ibid.*)

Under your facts, the CCTA Board will only be considering the Cooperative Agreement between the CCTA and GoMentum, which would supersede the current MOU and allow GoMentum to use grant funds CCTA obtained from the state. There are simply no facts to conclude that the two specified CCTA staff members will financially benefit from the Cooperative Agreement itself. 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." (See *Eden Township Healthcare District v. Sutter Health* (2011) 202 Cal.App.4th 208, 225.)

We note that the Principles of Agreement between GoMentum and AAA originally had employment offers for two CCTA staff members – but that proposed agreement has no bearing on the CCTA Board's approval of the Cooperative Agreement and, in any event, would ultimately have to be separately approved by the CCTA Board only after it approved the Cooperative

Agreement. Moreover, the current proposed Principles of Agreement no longer contains employment offers (nor presumably any other financial interest) for any CCTA staff.<sup>2</sup>

Accordingly, under the facts presented, Section 1090 does not prohibit the CCTA Board from approving the Cooperative Agreement between CCTA and GoMentum.<sup>3</sup>

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

Sincerely,

Brian G. Lau  
Acting General Counsel

By:   
Jack Woodside  
Senior Counsel, Legal Division

JW:jgl

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<sup>2</sup> On a separate ground, Section 1090 may not prohibit the Cooperative Agreement because it appears the two specified staff members may not have participated in the making of the contract. However, your facts state only that the CCTA Board does not know the extent, if any, that they provided any information, recommendations or opinions to affect or influence the Cooperative Agreement. Therefore, we do not reach any conclusions about their participation in the contract.

<sup>3</sup> Our conclusion is limited to whether the CCTA Board may approve the Cooperative Agreement between CCTA and GoMentum. The Commission does not advise on past conduct. Therefore, nothing in this advice letter should be construed to advise about any conduct that has already taken place. We express no opinion regarding the conduct of the Randell Iwasaki or Jack Hall and whether the conduct described potentially violated the Political Reform Act, including but not limited to Government Code Section 87407, which prohibits an official from making, participating in making, or using his or her position to influence a decision directly related to a person with whom the official is negotiating prospective employment.