



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
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October 16, 2018

Tom Schroeter  
City of Wasco Attorney  
254 H Street  
Bakersfield, CA 93304

Re: Your Request for Advice  
**Our File No. A-18-196**

Dear Mr. Schroeter:

This letter responds to your request for advice on behalf of Wasco City Councilmembers Gilberto Reyna and Danny Espitia, regarding the conflict of interest provisions of the Political Reform Act (the "Act")<sup>1</sup> and Government Code Section 1090.

Please 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 Kern 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

Do Councilmembers Reyna and Espitia have a conflict of interest in approving a City program which would provide grants to nonprofit organizations under the Political Reform Act or Section 1090 due to their involvement with a nonprofit organization, the Knights of Columbus?

### CONCLUSION

No. Councilmembers Reyna and Espitia do not have a conflict under the Act or Section 1090 in the decision to create the grant program. However, Councilmember Reyna would have a remote interest under Section 1090 in the event that he becomes an officer of the Knights of

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<sup>1</sup> 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.

Columbus and the City Council considers a grant to that organization, and would need to follow the disclosure and recusal requirements of Section 1091.

### FACTS

The City is considering implementation of a grants program to benefit non-profit organizations within the City. By its terms, the proposed policy is not available to non-profit organizations in which a councilmember is an officer or director. Both Councilmembers are members of the Knights of Columbus, which is a non-profit organization pursuant to Internal Revenue Code § 501(c)(3). Neither Councilmember has received more than \$500 in the past 12 months from the organization.<sup>2</sup> Councilmember Reyna has been selected by his local Knights of Columbus Council to be financial secretary. This must be approved by the National Organization, but the Councilmember believes that he will be approved. By the terms of the proposed program, the Knights of Columbus would not be eligible to participate in this program as long as councilmember Reyna is an officer.

The policy provides for financial assistance up to \$2,000 in any year to a non-profit organization within the City who is organized under Internal Revenue Code § 501(c)(3). Up to five grants per year can be given to five separate organizations for a total not-to-exceed \$10,000. Selection of the recipients is made by the City Council. The grant funding is to be used for "public purposes," which include but are not limited to charitable events, not-for-profit organizational events or programs and City functions or projects.

The program provides that a letter of award will be issued to the recipients which may include certain terms and conditions. Acceptance of a grant serves as an acknowledgement of an obligation to comply with all such terms and conditions. Failure to comply with these terms and conditions, and with this policy, can require the applicant to refund 100% of the grant at the discretion of the City. At this time, the City is only considering the establishment of the grant program, and you note that no applications for grants have been received nor are being considered.

You asked whether Councilmembers Reyna and Espitia's membership in the Knights of Columbus would create a conflict should the organization be considered for a grant in the future.

### ANALYSIS

#### *Conflict of Interest under the Act*

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Act's conflict-of-interest provisions only apply to conflicts of interests based on the following:

- A business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a)) or in which he or she is a director, officer, partner, trustee,

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<sup>2</sup> In a follow-up telephone conversation on September 17, 2018, you confirmed that neither Councilmember received compensation aggregating \$500 or more; adding that you do not believe either has received any compensation.

employee, or holds any position of management. (Section 87103(d).)

- Real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- Any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- Any source of gifts to him or her if the gifts total \$470 or more within 12 months prior to the decision. (Section 87103(e).)
- His or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is commonly referred to as the “personal financial effects” rule. (Section 87103.)

### *Business Entity*

If a public official is a director, officer, partner, trustee, employee, or holds any position of management in a business, the official has a financial interest in the business entity. However, under Section 82005, a non-profit organization is not a “business entity.” Therefore, Councilmember Reyna’s potential position as the financial secretary of the non-profit does not give rise to a financial interest in a business entity. In addition, merely being a member of the Knights of Columbus does not result in Councilmember Espitia having a financial interest in the organization.

### *Source of Income & Personal Finances*

You state that neither Councilmember has received compensation totaling \$500 or more in the past 12 months from the organization. Therefore, the non-profit is not a source of income to either councilmember. Moreover, while an official always has an interest in his or her personal finances and those of the official’s immediate family members, the facts do not suggest that either councilmember will experience any measurable financial benefit or loss from the decision.

Accordingly, under the Act’s conflict of interest provisions, Councilmembers Reyna and Espitia do not have a financial interest in the decision.

### *Conflict of Interest under Section 1090*

You have stated that the City is considering the implementation of a grants program to benefit non-profit organizations and that the program would not be available to non-profit organizations in which a councilmember is an officer or director. As proposed, Section 1090 would not preclude the City from implementing the program or Councilmembers Reyna and Espitia from participating in decisions to implement the program.

While there is no indication that the City will consider a grant to the Knights of Columbus in the future, we caution that Section 1090 prohibits any officer of the organization from participating in the award of the grant.

The "remote interest" exception for officers and employees of certain non-profit entities is found in Section 1091(b)(1) and states, in pertinent part:

"(b) As used in this article, "remote interest" means any of the following: . . .

"(1) That of an officer or employee of a non-profit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a non-profit corporation."

If a "remote interest" is present, as defined in Section 1091, the contract may be made provided: (1) the officer discloses his or her financial interest in the contract to the public body; (2) the interest is noted in the body's official records; and (3) the officer abstains from participating in the making of the contract. (See 84 Ops.Cal.Atty.Gen. 158, 159 (2001); 81 Ops.Cal.Atty.Gen. 169, 172 (1998); 65 Ops.Cal.Atty.Gen. 305, 307 (1982).)

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Zachary W. Norton  
Senior Counsel, Legal Division

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