



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 9, 2019

Heather C. Mc Laughlin
City Attorney
City Hall
250 East L Street
Benicia, CA 94510

Re: Your Request for Advice
Our File No. A-18-279

Dear Ms. Mc Laughlin:

This letter responds to your request for advice on behalf of Josh Chadwick, the Benicia Fire Chief, who also serves as a Member of the Board of Directors of the Solano Emergency Medical Services Cooperative (“SEMSC”) regarding Government Code Section 1090, *et seq.*¹ Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code. Also 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 Solano 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

Would participation by Director Chadwick in the SEMSC’s consideration of the RFP create a conflict of interest under Section 1090, particularly if and when the City of Benicia subsequently considers entering into a new Public-Private Partnership (“PPP”) Contract with the party selected by the SEMSC Board pursuant to the Request for Proposal (“RFP”) process?

CONCLUSION

No. Section 1090 does not preclude the SEMSC’s consideration of the RFP because Director Chadwick does not have a financial interest in the contract.

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

FACTS

The SEMSC is a Joint Powers Authority, created pursuant to the Joint Exercise of Powers Act (Gov. Code §6500 et seq.). It is comprised of public agencies in Solano County, including the County of Solano, several cities (e.g., the Cities of Benicia, Fairfield, Vallejo, and Rio Vista, among others), and several fire protection districts (e.g., the Montezuma and Cordelia Fire Protection districts, among others).

The SEMSC is governed by a seven-member board, including a city manager selected by the Solano County City Managers, a fire chief selected by the Solano-Napa Counties Fire Chiefs organization, and representatives of medical service providers and consumers. The City's Fire Chief, Mr. Chadwick, serves on the SEMSC Board, having been so selected by the Solano-Napa Counties Fire Chiefs organization.

The Current Contracts

Currently, the SEMSC is party to a contract with a private ambulance company for the provision of certain medical emergency services, e.g., transportation to a hospital. This contract requires the private ambulance services company to respond to medical emergency calls within certain timeframes. Those response timeframes are less stringent within certain geographic zones where a local public agency member of the JPA employs medical professionals (e.g., paramedics) who respond to medical emergencies-which reduces the ambulance services company's expenses relative to responding in those zones. The City, through its Fire Department, employs medical professionals who are first responders to medical emergencies.

Pursuant to a separate contract between the private ambulance services company and the local public agencies that provide medical professionals as first responders (including the City), the ambulance services company reimburses those agencies for expenses related to providing medical professional as first responders, based on the terms of that PPP Contract. The City is a party to the PPP Contract.

The RFP

The SEMSC Board is currently preparing an RFP to seek responses from parties interested in entering into a contract with the SEMSC to provide ambulance and related services within the relevant geographic area. The draft "Blueprint" prepared by a consultant to the SEMSC for the RFP, as well as the draft RFP, anticipate that the party with whom the SEMSC contracts must enter into a new PPP contract. The Board has begun to evaluate the Blueprint and proposed RFP. The scope and terms of a new PPP contract, while tangential to the award of a contract by the SEMSC Board to an ambulance services provider, might be addressed, in part, through the SEMSC's RFP and contracting process.

The City is not considering submitting a proposal in response to the RFP, and the Fire Chief also has no interest in any person or entity that may respond to the RFP. However, it is anticipated that the City will consider entering, and most likely will enter, into a new PPP contract with the party selected by the SEMSC Board pursuant to its RFP process. You note that the PPP funds are distributed by the private ambulance company to SEMSC who then distributes the funds to the

cities. The funds to Benicia are deposited into the General Fund and not directly to the Fire Department. Neither the PPP contract nor SEMSC agreement require the funds to be deposited to the Fire Department accounts. The use of the PPP funds received is up to the discretion of the City Council.

ANALYSIS

Section 1090 provides, in part, that “[m]embers of the Legislature, state, County, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” Section 1090 applies to virtually all state and local officers, employees, and multi-member bodies, whether elected or appointed and covers a broad range of actions by a public official other than actually approving a contract, including actions involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitation for bids.

In this instance, Director Chadwick is a public officer subject to the provisions of Section 1090. Additionally, as a member of the governing board of SEMSC, he is presumed to be involved in the making of all contracts by board irrespective of whether he actually participates in the making of the contract. (*Thomson v. Call* (1985) 38 Cal.3d 633, 645 & 649.) Thus, the determinative question is whether Director Chadwick has a financial interest in SEMSC’s consideration of the RFP.

Generally, a “financial interest” is broadly defined for purposes of Section 1090 and includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. 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.)

Under the facts provided, the RFP involves a contract with a private ambulance company for the provision of certain medical emergency services, whereby the ambulance services company reimburses those local agencies for expenses related to providing medical professionals as first responders, based on the terms of that PPP Contract. There is nothing to suggest that this would involve any effect on the salary or other tangible benefit Director Chadwick receives from the City for his position as Fire Chief. You note that Director Chadwick has no interest in any person or entity that may respond to the RFP. PPP funds are distributed by the private ambulance company to SEMSC who then distributes the funds to the cities, and funds paid to Benicia are deposited into the General Fund and not directly to the Fire Department. Under these circumstances, we do not find that Director Chadwick has a financial interest in the PPP contract merely because he receives a government salary from the City. Accordingly, we conclude that Section 1090 does not apply under the facts presented.

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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