



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
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November 13, 2019

Amy Webber  
Deputy City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

Re: Your Request for Advice  
Our File No. A-19-063

Dear Ms. Webber:

This letter is in response to your request for advice on behalf of the City of Long Beach (the City) and Councilmember Rex Richardson regarding the conflict of interest provisions of the Political Reform Act (the Act)<sup>1</sup> and Section 1090. Please note that we are not a finder of fact when rendering advice and any advice we provide assumes your facts are complete and accurate. (*In re Oglesby* (1975) 1 FPPC Ops. 71)

Under 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 Los Angeles 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

1. Does Rex Richardson, a member City of Long Beach (the City) City Council, have a conflict of interest under Section 1090 that would prevent him from accepting a job as Senior Director of State Government Affairs for Charter Communications (Charter)?
2. Do the Act's conflict of interest provisions prohibit the Councilmember from taking part in decisions relating to Charter?

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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.

## CONCLUSIONS

1. While Section 1090 does not prohibit the Councilmember from accepting employment with Charter, if the Councilmember accepts Charter's employment offer, Section 1090 would apply to the Councilmember with respect to, and generally prohibit the City Council from entering into, a contract between the City and Charter.

2. If the Councilmember is negotiating, or has any arrangement concerning prospective employment with Charter, then Section 87407 prohibits him from taking part in any decision directly relating to Charter. If the Councilmember becomes a Charter employee, then the Act's conflict of interest provisions would also prohibit him from participating in a decision involving Charter if it is reasonably foreseeable that the decision would have a material financial effect on one or more of his financial interests, including his interests in Charter as a source of income or business entity.

## FACTS

Councilmember Richardson is serving his second term as a member of the City Council. Under the City Charter, the nine-member City Council has broad authority over City contracts and policies. City Council members are not full-time employees. They are paid for part-time service and receive benefits on that basis. Under the City Charter, they are not required to devote 100% of their time during business hours to the duties of their office. Although most devote considerably more time than required, they also hold fulltime jobs with outside employers.

Councilmember Richardson has recently been offered a position as Senior Director of State Government Affairs for Charter Communications, a telecommunications and mass media company serving consumers and businesses under the branding of Spectrum. Providing services to over 26 million customers in 41 states, it is the second-largest cable operator in the United States by subscribers, just behind Comcast, and the third largest pay TV operator behind Comcast and AT&T. Charter has advised Councilmember Richardson that, if hired, he would be acting at the regional and state level, and would not be handling local City issues.

The City has contracts with Charter for internet and cellular service that may be extended or renewed in the future.

## ANALYSIS

### A. Section 1090.

Section 1090 generally prohibits a public officer or employee from making or participating in the making of a contract in which he is 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.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) A contract made in violation of Section 1090 is void (*Thomson v. Call* (1985) 38 Cal.3d 633, 646), and an official with a prohibited interest in such a contract is

subject to civil penalties (Sections 1097.1 and 1097.3), as well as criminal penalties if the violation was willful (Section 1097).

The California Supreme Court has held that the purpose of Section 1090 is to make certain that “every public officer be guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity.” (*Thomson v. Call, supra*, at p. 650.) Eliminating temptation for public officers and employees, obtaining their undivided loyalty, and avoiding the perception of impropriety are important public policy goals in California. (*Id.* at p. 648.) Consequently, Section 1090 applies without regard to whether actual fraud or dishonesty is involved in the contracting process, the contract is fair to the public agency, or the public agency loses money from the contract. (*Id.* at pp. 648-649.)

Because Section 1090 applies to city councilmembers (*id.* at p. 633), the Councilmember is subject to Section 1090. The decisions at issue involve multiple active contracts between the City and Charter that may be extended or renewed in the future. Because a public officer generally has a financial interest in a contract between his public entity and his private employer for purposes of Section 1090 (89 Ops.Cal.Atty.Gen. 278, 280 (2006); 88 Ops.Cal.Atty.Gen. 106, 108-110 (2005); 58 Ops.Cal.Atty.Gen. 670, 677-678 (1975)), the Councilmember would have a financial interest in Charter if he accepts its employment offer.

We now consider whether the Councilmember would make or participate in the making of the contracts between the City and Charter. Under Section 1090, a member of a public agency’s governing body is conclusively presumed to participate in the making of a contract under the governing body’s authority, regardless of whether he actually participates in the making of that contract. (*Thomson v. Call, supra*, at pp. 649-650.) Therefore, Section 1090 prohibits the entire body from entering into a contract in which a member of the body is financially interested, even if that member abstains from participating in the making of the contract or fully discloses his financial interest in the contract.

If the Councilmember accepts the employment offer from Charter, then Section 1090 would apply to him with respect to, and generally prohibit the City Council from entering into, a contract between the City and Charter based on the limited facts presented.

Because you have identified multiple existing contracts, as well as possible future contracts, between the City and Charter, we can only generally conclude that Section 1090 prohibits the City Council from amending or renewing those existing contracts, or entering into those future contracts, with the Company if you accept employment with Charter. We have not been provided sufficient facts to determine if any exception to Section 1090, such as the remote interest exception for competitively bid contracts set forth in Section 1091(b)(3) or the rule of necessity, may apply to any specific contract between the City and Charter.

**B. The Act.**

**1. Section 87407.**

Under the Act, the first issue is whether Section 87407 prohibits the Councilmember from taking part in decisions directly relating to Charter. Section 87407, which ensures that a public official does not use his official position to make any governmental decision that unduly benefits a prospective private-sector employer, provides as follows:

No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

Thus, when an official has negotiated or arranged for prospective employment, Section 87407 prohibits the official from making, participating in making, or using his official position to influence any decision relating directly to the prospective employer.

Under Section 87407, an official is “negotiating” prospective employment when he interviews or discusses an offer of employment with an employer; has an “arrangement” concerning prospective employment when he accepts an employer’s offer of employment; and is not “negotiating” and does not have an “arrangement” concerning prospective employment if he rejects or is rejected for employment. (Regulation 18747(c)(1)-(3).)

Here, the Councilmember would be “negotiating” prospective employment with Charter if he discusses or has discussed employment offer with Charter. He would have an “arrangement” concerning prospective employment if he accepts Charter’s employment offer. The Councilmember, however, would not be “negotiating” or have an “arrangement” concerning prospective employment if he rejects or if Charter retracts the employment offer. Consequently, if the Councilmember is negotiating, or has any arrangement concerning, prospective employment with Charter, Section 87407 would prohibit him from taking part in any decision directly relating to Charter.

**2. Sections 87100 and 87103.**

The Act’s conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests distinguishable from the decisions’ effect on the public generally. (Sections 87100 and 87103.) An official’s interests that may give rise to a disqualifying conflict of interest are identified in Section 87103. The Councilmember would have the following interests relevant to the decisions at issue if he accepts Charter’s employment offer: (1) a business interest in Charter under Section 87103(d) as a Charter employee, or under Section 87103(a) if he obtains an investment in the company worth \$2,000 or more; (2) a source of income interest in Charter under Section 87103(c) if he aggregates \$500 or more in value from it in the 12 months prior to the decision at issue; and (3) an interest in his personal finances and those of immediate family members under Section 87103.

If the Councilmember accepts Charter's employment offer, and if it is reasonably foreseeable that a decision relating to Charter would have a material financial effect on Charter, then the Act's conflict of interest provisions would prohibit him from taking part in that decision. If the Act prohibits the Councilmember from taking part in a decision, he must recuse himself from that decision pursuant to Section 87105 and Regulation 18707. If the Councilmember obtains an interest in Charter, and if a specifically identifiable decision relating to Charter subsequently comes before the City Council that may have a disqualifying effect on Charter, then the Councilmember should seek additional advice regarding whether the Act's conflict of interest provisions would prohibit him from taking part in that decision.

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

Sincerely,

  
Dave Bainbridge  
General Counsel

By:   
John M. Feser Jr.  
Senior Counsel, Legal Division