



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 10, 2019

Shannon L. Chaffin
City Attorney, Yuba City
2440 Turlare Street, Suite 410
Fresno, CA 93721

Re: Your Request for Advice
Our File No. A-19-065

Dear Ms. Chaffin:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the Act) and Section 1090.¹ Please note that we are only providing advice under the conflict of interest provisions of the Political Reform Act (the Act), and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

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 Sutter 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

Under Section 1090, may the City of Yuba (the City) contract with Valley Truck and Trailer Company (VTT) for products and services, despite City Councilmember Marc Boomgaarden being an employee of the company?

CONCLUSION

Yes. Based on the facts provided, Councilmember Boomgaarden has a remote interest in a contract with VTT and the City is not prohibited from entering the contract so long as the councilmember properly recuses himself from the contracting process.

¹ 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

Marc Boomgaarden was elected to the Yuba City Council in November 2018. He has also been a VTT employee since January 2010. Councilmember Boomgaarden has no ownership interest in the company, does not own any company stock, and is not an officer or director of the company. Additionally, VTT has over 10 employees.

The City and VTT have a longstanding business relationship. For many years, (i) the City has purchased parts, equipment, lawn mowers, and tractors (collectively, "products") from VTT and (ii) VTT has provided servicing of equipment and tractors for the City as well as provided breakdown repairs for equipment and tractors. These services have been performed pursuant to warranties and ad hoc servicing contracts.

VTT sells products from various manufacturers, but primarily from John Deere. Likewise, the City primarily purchases John Deere products from VTT, but products from other brands as well. Requiring repairs and servicing to be performed at locations other than VTT would add significant costs and time delays for such repairs, as there are no other businesses providing the same services in the City. Thus, servicing and repairs performed at other locations may become cost prohibitive.

Currently, there are no existing contracts or service orders between the City and VTT. The City has purchased products from John Deere directly and VTT has the ability to service or repair such products. The City currently has three pieces of equipment that are still under warranty and are required to be sent to a John Deere dealership for service.

ANALYSIS

Section 1090 provides:

Members 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. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

Section 1091, however, states:

An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Section 1091(b)(2) defines "remote interest" to include, in relevant part:

That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

Here, Councilmember Boomgaarden is an employee of VTT which has more than 10 other employees, has worked for VTT longer than three years, owns no stock in VTT, and is not an officer or director of the company. Under these circumstances, so long as Councilmember Boomgaarden refrains from participating in formulating VTT's bid and properly recuses himself from the contracting process, then the "remote interest" exception described in Section 1091(b)(2) is applicable and the City may contract with VTT without violating Section 1090.

In addition to Section 1090, we also note the potential application of the Political Reform Act. Under the Act, Councilmember Boomgaarden has an economic interest in his own personal finances and in in VTT as a business entity and source of income. (Section 87103.) Where a governmental decision will have a reasonably foreseeable, material financial effect on either of those economic interests, Councilmember Boomgaarden is deemed to have a disqualifying financial interest under the Act, and must recuse himself from such decisions. (See Sections 87100, 87103.) Additional analysis under the Act is not necessary with respect to the potential contracts at issue here. Provided Councilmember Boomgaarden recuses himself from the contract decisions under Section 1090, the Act is not implicated and does not prevent the City from entering the contract. We note, however, that Councilmember Boomgaarden must also leave the room during the consideration of any such contracts pursuant to the Act's recusal requirements under Regulation 18707.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:aja