



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 26, 2019

Hilda Cantu Montoy
Montoy Law Corporation
2440 Tulare St., Suite 410
Fresno, CA 93721

Re: Your Request for Advice
Our File No. A-19-198

Dear Ms. Montoy:

This letter responds to your request for advice regarding conflict of interest provisions of Government Code section 1090 ("Section 1090"). Please note that we are only providing advice under the conflict of interest provisions of 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 Madera 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 City of Madera from entering into a contract with Community Action Partnership of Madera County ("CAPMC") where Steve Montes, a member of the City Council, is an uncompensated board member of the nonprofit?

CONCLUSION

No. The noninterest exception set forth in Section 1091.5(a)(8) would allow the City to enter a contract with CAPMC so long as his interest is noted in the City Council's official records.

FACTS AS PRESENTED BY REQUESTER

Your office serves as City Attorney for the City of Madera. Over the years the City has contracted for services with CAPMC, a public nonprofit 501(c)(3) organization.

CAPMC is committed to improving the social well-being and economic capacity of low to moderate-income individuals and families, as well as providing opportunities to achieve economic independence. It has been the voice and catalyst of empowerment and opportunity to the “at risk” and “invisible” population living in the community. Its primary purpose is to end poverty in Madera County by offering services that provide families with a safe and healthy environment, challenging individuals to achieve positive results toward personal and collective prosperity and promoting personal growth and independence.

The City receives Community Development Block Grant (“CDBG”) funds from the Department of Housing and Urban Development (“HUD”) which it uses to fund various nonprofit organizations to provide services in the City. The City has historically provided grant funds to CAPMC to provide the services consistent with its mission. The City’s last agreement with CAPMC for grant funds required that it coordinate local efforts to address homelessness. The grant process is an annual one with the next round beginning in early 2020

Recently, Council Member Montes became a member of the Board of Directors of CAPMC. He is not employed by CAPMC and does not receive any salary, compensation, stipend, or reimbursement from the nonprofit.

ANALYSIS

Section 1090 codifies the common law prohibition against “self-dealing” with respect to governmental contracts. Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.)

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. Taft* (1962) 58 Cal.2d 565, 569.) Employees have been found to have a financial interest in a contract that involves their employer, even where the contract would not result in a change in income or directly involve the employee because an employee has an overall interest in the financial success of the firm and continued employment.

The Legislature, however, has created various statutory exceptions to Section 1090’s prohibition where the interest involved is deemed a “remote interest,” as defined in Section 1091 or a “noninterest,” as defined in Section 1091.5. If a noninterest is present, the public official’s abstention is generally not required, and the contract may be made by the agency.

Noncompensated officer of a nonprofit, tax-exempt corporation.

The noninterest exception in Section 1091.5(a)(8) reads as follows:

That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

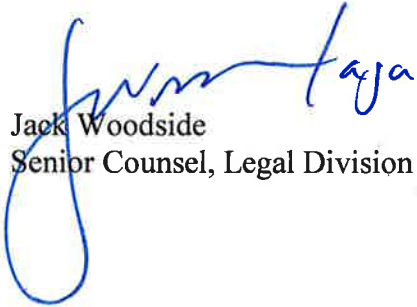
For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

You stated that CAPMC is an Internal Revenue Code 501(c)(3) organization, and Council Member Montes receives no compensation by serving on its board. Additionally, based upon the description of the services it provides, the primary purpose of CAPMC to end poverty in Madera supports one of the functions of the Madera City Council. Accordingly, if Council Member Montes notes his interest in the City Council's official records during CAPMC's funding deliberations, he and the Commission are not prohibited under Section 1090 from entering into the grant.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Senior Counsel, Legal Division

JW:aja