



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

November 26, 2025

Lilliana K. Selke
Stockton East Water District
Herum Crabtree Suntag
5757 Pacific Ave. Suite 222
Stockton, CA 95207

Re: Your Request for Advice
Our File No. A-25-035

Dear Ms. Selke:

This letter responds to your request for advice on behalf of Stockton East Water District Board Member Richard Atkins regarding the Political Reform Act (“Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under 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. Further, the Commission is not authorized and does not provide advice concerning past conduct. (Section 1097.1(c)(2) and Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the San Joaquin 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).)

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 18104 through 18998 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.

QUESTIONS

1. Does Board Member Atkins have a disqualifying financial interest under the Act or Section 1090 in relation to the Stockton East Water District purchasing an easement over property held by the Joy Atkins et al. Trust, of which the Board Member is a co-trustee and beneficiary?

2. Does Section 1090 prevent the Trust from entering into a water service contract with the District for water available from the Pipeline Project once completed?

CONCLUSIONS

1. Yes, Board Member Atkins has a disqualifying financial interest in the decision under the Act and may not participate in the easement purchase agreement. Under the prohibitions in Section 1090, his interest would also preclude the District from entering into the agreement. However, as we have determined that the rule of necessity applies, the District may enter into the purchase of an easement with the Trust so long as Board Member Atkins refrains from any participation and disqualifies himself from the decision in his official capacity.

2. No. So long as the services will be broadly available to all parcels identified as serviceable by the proposed pipeline, and on substantially similar terms, the noninterest exception under Section 1091.5(a)(3) applies to permit the Trust to contract with the District for water services once the Pipeline Project is completed.

FACTS AS PRESENTED BY REQUESTER

Your firm serves as counsel to the Stockton East Water District. The District has developed a “Pipeline Project” as part of its greater Water Supply Enhancement Project. The District has a right to divert water from the Calaveras River, which lies directly north of the proposed pipeline, across Comstock Road. The District determined the most logical alignment for the proposed pipeline to be due south of the Calaveras River, which would run along several agricultural parcels currently relying solely on groundwater to irrigate their properties. The District envisions that the pipeline would be centered on property lines, with the properties on either side granting a 10-foot-wide easement to the District. The District engaged in informal discussions with most of the landowners with parcels in proximity to the proposed pipeline to determine an overall demand for surface water. The District took away from those informal meetings a general demand amongst the landowners along the proposed pipeline alignment. In addition, the Project has the potential to serve more than those landowners who have indicated a desire to have a turnout installed on the pipeline.

More specifically, the Project would have the potential to serve 31 different parcels with surface water, with 18 of those landowners having expressed a desire to take surface water from the District. To complete the Project, approximately 18 parcels would need to grant the District an easement. The proposed pipeline would be 24” in diameter for the mainline and 12” for laterals.

The District has indicated that there is no feasible alternative alignment for the pipeline, as the current alignment is the only way to supply surface water to those parties who have requested it and/or indicated a willingness to take it. The only alternative would be not doing the project.

A document provided by the District entitled “Clements Pipeline – Turnout Map” identifies parcels adjacent to the proposed pipeline. Of these parcels, two are identified as CR-21F, listing the owner as Joy Atkins et al. Trust (the “Trust”). Joy Atkins is the mother of current District Board Member, Richard Atkins. The parcels are held in Joy Atkins’ revocable trust, with Board Member Atkins, his mother, and his brother all serving as co-trustees. Additionally, Board Member Atkins and his brother are beneficiaries of the trust, each with a beneficial interest of 10 percent or greater. While a co-trustee, Board Member Atkins does not have the power to revoke or terminate the trust; has not retained or reserved any rights to the income or principal of the trust, or retained any reversionary or remainder interest; nor has he retained or reserved any power of appointment.

Board Member Atkins currently farms crops on the properties in question and retains the income therefrom, having made more than \$500 in income from the sale of these crops in the last 12 months. He does not pay rent to the Trust to utilize the property to grow his crops, and the fair market value of renting the property would exceed \$630 in a calendar year. Aside from this use of the property, he does not presently receive income from the Trust.

ANALYSIS

The Act

The Act’s conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) The financial interests that may give rise to an official’s disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- A business entity in which the official has an investment of \$2,000 or more; or in which the official is a director, officer, partner, trustee, employee, or manager.
- A source of income aggregating \$500 or more in value provided or promised to, or received by, the public official within 12 months prior to the time when the decision is made.
- Any interest in real property in which the public official has a direct or indirect interest worth \$2,000 or more.
- Any individual or entity from whom the official has received gifts aggregating to \$630 or more in the previous 12 months.²

² While receiving the use of the Trust properties without being charged rent, is a “gift,” and thus “income” under the Act there is an exception to the definition of “gift,” specifically excluding gifts from an individual’s spouse, child, parent, . . . , [or] brother. . . .” (Section 82028(b)(3).) Because the Trust is controlled by Board Member Atkins’ mother, the use of the Trust property without costs is not a potentially disqualifying gift under the Act.

Interests in Farming Business

Related to the decisions at issue, Board Member Atkins has identified a business entity and source of income interest in his farming business, which uses the Trust land to grow his crops and earn income. Board Member Atkins also has a financial interest in any real property owned or leased by the business. Board Member Atkins does not have a formal lease agreement and does not pay rent. Nonetheless, the fact that Board Member Atkins' mother, a trustor of the Trust, allows him to use property held in the Trust for farming operations is a potential interest in the property under the Act.

Interests in Trust's Real Property

The Act defines an "interest in real property" to include "any leasehold, beneficial or ownership interest, or an option to acquire such an interest." (Section 82033.) A real property interest does not include "the interest of a tenant in a periodic tenancy of one month or less." (Regulation 18233.) While there is no formal agreement, the informal arrangement would likely be considered a lease for agricultural purposes with some right to continue using the property that exceeds a month-to-month tenancy. For instance, under California law, agricultural "hiring of real property" for agricultural purposes is presumed to be for one year from its commencement unless facts indicate otherwise. (Civ. Code Section 1943.) To the extent the informal agreement constitutes a lease, Mr. Atkins has an interest in the property that potentially disqualifies him from any decisions with a financial effect on the property. However, in light of our conclusion below that Board Member Atkins has an interest in the property of the Trust under Regulation 18234, which exceeds a leasehold interest, it is unnecessary to further consider Board Member Atkins' interest in the property as a leasehold interest.

Regulation 18234 provides that an official has a financial interest in the pro rata share of the interests in real property, sources of income, and investments of a trust in which the official has a direct, indirect, or beneficial interest of 10 percent or greater. However, an official has an interest in a trust under Regulation 18234 only if the official is:

(1) A trustor and:

(A) Can revoke or terminate the trust;

(B) Has retained or reserved any rights to the income or principal of the trust, or retained any reversionary or remainder interest; or

(C) Has retained or reserved any power of appointment, including but not limited to the power to change the trustee, or the power to amend, alter or designate, either alone or in conjunction with anyone else, the person or persons who shall possess or enjoy the trust property or income.

(2) A beneficiary and:

(A) Presently receives income; or

(B) Has an irrevocable future right to receive income or principal.

Examining the Trust and the use of property held in the Trust for agricultural purposes, Board Member Atkins is deriving income from the use of the property. Accordingly, we must determine if Board Member Atkins has an interest in the property under the provisions of Regulation 18234. While Board Member Atkins is not the Trustor, he is a co-trustee and beneficiary of the Trust. As stated above, an official has an interest in property held by a trust if the official is a beneficiary and either presently receives income or has an irrevocable future right to receive income or principal. (Regulation 18234(c)(2).)

Under the facts provided, Board Member Atkins is a beneficiary of the Trust, but does not have an irrevocable right to future income or principal. Thus, the pertinent question is whether Board Member Atkins is currently receiving income from the Trust for purposes of the Act. While the income is not necessarily received under the terms of the Trust, the income is derived from the use of the property held in Trust under an informal agreement with Board Member Atkins' mother, the Trustor. For purposes of the Act, "income" is broadly defined to include the "proceeds from any sale." (Section 82030.) Board Member Atkins receives income through the sale of crops grown on property held by the Trust. Taking this into consideration, along with the Act's mandate that it be "liberally construed to accomplish its purposes" (Section 81003), we find that Board Member Atkins is a beneficiary currently receiving income from the Trust and has an interest in the property held by the Trust under Regulation 18234.³

A financial effect is presumed reasonably foreseeable where the official's financial interest is explicitly involved as a named party in, or subject to, the decision (Regulation 18701(a)), and the effect is material (Regulation 18702.2(a)(4)) if the decision authorizes the purchase of the real property, as we have here. The Trust is a named party to the easement contract. Therefore, under the Act, Board Member Atkins is disqualified in his official capacity from "making, participating in making or using his official position to influence" any District decisions related to the purchase of an easement from the Trust and in any other decisions in which the Trust property is the subject of the action to be taken by the District. (See Regulation 18704(a)-(c).) He must recuse himself from those governmental decisions.⁴

Making, Participating in Making, or Influencing a Decision

In regard to taking part in negotiating and exercising the easement outside of his official capacity, we note that Section 87100 generally prohibits an interested official from making, participating in making, or using their official position to influence a decision. For a decision before the official's own agency, using a position to influence a decision includes any attempt to contact or

³ As we have determined the official has an interest in real property held by the Trust and the property is explicitly involved in the decision before the agency, it is unnecessary to separately consider disqualification based on interests in the farm as a business entity and source of income, or potential leasehold interest.

⁴ Regulation 18707(b) states the relevant recusal requirements that a disqualified member of a community services board must follow: the official must not take part in the decision, and the recusal may be accompanied by an oral or written disclosure of the disqualifying financial interest, the official must not be counted toward achieving a quorum, and the official may not be present during a closed board meeting when the decision is considered or knowingly obtain or review any nonpublic information regarding the decision. The agency may also adopt local rules requiring the official to step down from the dais or leave the chambers.

appear before an agency official for the purpose of affecting the decision. (Regulation 18704(c)(1).) This includes any attempt to contact or appear before an agency official in a private capacity, as well as in the official's governmental capacity. While there is a limited exception, which allows an otherwise interested official to appear before the official's own agency in the course of its prescribed governmental function if the appearance is related solely to the official's personal interest in real property owned entirely by the official, the official's immediate family, or the official and the official's immediate family (Regulation 18704(d)(2)(A)), this exception does not apply to the facts presented. In this instance, as the property in question is wholly owned by the Trust controlled by Board Member Atkins' mother, Board Member Atkins' may not have any involvement negotiating the easement even in a private capacity. His mother, or another representative of the Trust designated by her, must negotiate the easement contract with the District.

Government Code Section 1090

The easement purchase agreement is a contract, and therefore, we must also consider the prohibitions under Section 1090, a separate body of law. Under Section 1090, public officials "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 a member."

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.) 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.) A contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) When Section 1090 is applicable to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647-649.) Additionally, participation in the making of a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall*, supra.)

An easement purchase agreement between the District and the Trust is a contract in which Board Member Atkins, as a co-trustee and one who derives income from the sale of crops grown on property held by the Trust, has a disqualifying financial interest under Section 1090. Accordingly, the District's easement purchase agreement with the Trust would be prohibited even with Board Member Atkins' recusal, unless an exception applies.

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091, or a "noninterest," as defined in Section 1091.5. Where a remote interest is present, the contract may be lawfully executed provided (1) the officer discloses his or her financial interest in the contract to the public agency; (2) the interest is noted in the public body's official records; and (3) the officer completely abstains from any participation in the making of the contract. (Section 1091.) Where a noninterest is present, the contract may be executed without the abstention. (Section 1091.5.)

Of note, Section 1091(b)(5) defines as a remote interest that of a “landlord or tenant of the contracting party.” However, this exception generally applies only if the interest in the decision is based solely on the interest as a landlord or tenant. It does not extend to circumstances where the interest in the decisions arises separately from the landlord or tenant relationship. (*See* 89 Ops.Cal.Atty.Gen. 193 (2006).) In this case, Board Member Atkins has interests in the decisions wholly unrelated to any leasehold interest he may have including an interest in the Trust as a beneficiary receiving income derived from the use property held by the Trust under an informal agreement with his mother, the Trustor, and an interest in a business and income from a business resulting from his farming operations. Accordingly, the remote interest exception for a tenant of the contracting party does not apply under the facts presented.

In limited circumstances, the rule of necessity has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (*Dietrick* Advice Letter, No. A-15-174; 88 Ops.Cal.Atty.Gen. 106, 110 (2005).) The California Supreme Court has stated, “[t]he rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so (*Eldridge v. Sierra View Local Hospital Dist.*, *supra*, 224 Cal.App.3d at pp. 321-322; see *Olson v. Cory* (1980) 27 Cal.3d 532, 537 . . .), but it requires all conflicted members to refrain from any participation.” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1097.) The Attorney General states that “the rule of necessity is to reflect actual necessity after all possible alternatives have been explored” (69 Ops.Cal.Atty.Gen. 102 (1986), p. 109, fn.6) and, the “mere fact that a proposed arrangement might be more convenient is not sufficient to involve the rule of necessity.” (4 Ops.Cal.Atty.Gen. 264 (1944).)

The rule of necessity has been applied in at least two specific types of situations: 1) in procurement situations for essential supplies or services when no source other than the one that triggers the conflict is available; and 2) in non-procurement situations to carry out essential duties of the office when the official or board is the only one authorized to act. The effect of the rule of necessity is to permit a board with a member who is financially interested to make the contract, even though the interested board member must disqualify themselves from participating in its making. (*See* “Conflicts of Interest,” California Attorney General’s Office, 2010, p. 78.)

We have considered whether the rule of necessity applied to allow a governing body to acquire property rights where the landowner was a member of that body. In the *Schons* Advice Letter, No. A-16-180, we advised a water district that the rule of necessity permitted its board to negotiate a resolution of various easement and related property access claims so that the water district could “properly access its property containing the tank site and the wastewater treatment plant” with the landowner who was also a district board member. We advised that obtaining the access would “unquestionably provide essential services to the community and resolve ongoing easement and related property access claims” with the landowner and board director. Similarly, in *Ennis* Advice Letter, No. A-21-112/113, we advised that the rule of necessity permitted a city council to settle/acquire rights of way and easements by entering into a contract with the landowner, the city’s mayor, for a road construction connectivity project, in furtherance of an essential city function of building out the city’s planned roadway system. The city stated that completing the project was the only feasible option and that settling the land rights issues would avoid unnecessary litigation and expense.

Similarly, in this matter, the District seeks to purchase the easement from the property held by the Trust to perform its essential function of providing irrigation water to agricultural parcels. The facts indicate that the District is the only agency authorized to act in this capacity and purchase the property. Further, the purchase reflects an actual necessity as the District has stated the only alternative is not constructing the Pipeline. Therefore, we advise that under the rule of necessity, the District may enter into the purchase of an easement with the Trust so long as Board Member Atkins refrains from any participation and disqualifies himself from the decision in his official capacity.

Water Service Contract

Assuming the Pipeline Project moves forward, the next question involves whether the Trust may enter into a contract with the District for water services provided via the Pipeline. The issue, therefore, is whether any exceptions to Section 1090 apply to allow the District to enter a contract with the Trust to provide water services.

Relevant to the present situation is the noninterest exception set forth in Section 1091.5(a)(3) for “public services generally provided.” That exception provides that an officer or employee “shall not be deemed to be interested” in a public contract if his or her interest in that contract is “[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.”

The California Supreme Court considered the application of this noninterest exception and read the exception to establish the following rule:

If the financial interest arises in the context of the affected official’s or employee’s role as a constituent of his or her public agency and recipient of its services, there is no conflict so long as the services are broadly available to all others similarly situated, rather than narrowly tailored to specially favor any official or group of officials, and are provided on substantially the same terms as for any other constituent.

(Lexin v. Superior Court (2010) 47 Cal.4th 1050, 1092.)

The Attorney General, then, has expanded upon the definition of “public services generally provided” providing:

“Public services generally provided” certainly include public utilities such as water, gas, and electricity. But qualifying “public services” are not limited to services provided to the general public or the public at large; “[p]ublic agencies provide many kinds of ‘public services’ that only a limited portion of the public needs or can use.” Thus, for example, in *City of Vernon*, a municipal water district’s sale of reclaimed water to just 23 water purveyors (who then retailed the water) was deemed to be a public service within the scope of subdivision (a)(3). We have previously determined that the rental of airplane-hangar space at a public airport is a public service, as is the sale of advertising space in a city brochure to be distributed free to city residents, even though relatively few individuals would seek to avail themselves of those services. Hence, the fact that the public constituency for a particular service is small is not disqualifying.

(96 Ops.Cal.Atty.Gen. 67 (2013) [internal citations omitted].)

With respect to an agency's permissible exercise of discretion in providing a public service generally provided under the exception, the Supreme Court stated:

The presence of discretion in the formation of a contract that section 1091.5(a)(3) purportedly permits is not fatal, unless the discretion can be exercised to permit the special tailoring of benefits to advantage one or more board members over their constituency as a whole. Absent such a risk of favoritism, discretion is unproblematic.

(*Id.* at p. 1100.)

Thus, the noninterest exception set forth in Section 1091.5(a)(3) applies if: (1) the interest arises in the context of the affected official's or employee's role as a constituent of the public agency and recipient of its services; (2) the service at issue is broadly available to all those whom are similarly situated and is not narrowly tailored to specially favor an official or group of officials; and (3) the service at issue is provided on substantially the same terms as for any other constituent.

Here, if the District provides water services to the Trust, Board Member Atkin's interest in the ensuing contract will arise in the context of the Trust's constituency within the District's jurisdiction and as a recipient of the District's services. So long as the services will be broadly available to all parcels adjacent to the proposed pipeline, and on substantially similar terms, the noninterest exception will apply. Accordingly to the extent that these requirements are met, the noninterest exception under Section 1091.5(a)(3) applies to permit the Trust to contract with the District for the provision of water vis-à-vis the Pipeline Project.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "E.M. Boyd", is written over a light blue horizontal line.

By: Erika M. Boyd
Senior Counsel, Legal Division

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