



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3050 • Sacramento, CA 95811

February 13, 2026

Adrienne Barnes
Chief Executive Officer
Amethod Public Schools
1450 Marina Way S.
Richmond, CA 94804

**Re: Your Request for Advice
Our File No. A-25-161**

Dear Ms. Barnes:

This letter responds to your request for advice on behalf of Amethod Public Schools (“AMPS”) and Board Member Margie DiGiorgio regarding the Political Reform Act (the “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.

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 Contra Costa 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 the Act or Section 1090 prohibit AMPS from entering into a human resources services contract with Griffin Technology Academies (“GTA”), a nonprofit public charter school operator that employs Board Member DiGiorgio?

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.

CONCLUSION

Neither the Act nor Section 1090 prohibits AMPS from entering into the contract. Under Section 1090, Board Member DiGiorgio has a remote interest because she is employed by a nonprofit, GTA. AMPS may enter into the contract with GTA, but Board Member DiGiorgio must abstain from any participation in the making of the contract. Additionally, because the remedy in this situation under the Act would be the same, we do not analyze the conflicts of interest under the Act.

FACTS AS PRESENTED BY REQUESTER

AMPS is both a 501(c)(3) nonprofit public benefit corporation and public charter school operator that operates public charter schools in the Cities of Oakland and Richmond. As a charter school operator, its public officials are subject to the Act and Section 1090. (Education Code Section 47604.1.) Like AMPS, GTA is also a 501(c)(3) nonprofit public benefit corporation and public charter school operator, but GTA operates public charter schools in the City of Vallejo. AMPS is considering entering into a contract with GTA, for GTA to provide human resources services to AMPS.

AMPS Board Member DiGiorgio is employed by GTA as a Program Director of the Independent Learning Program at GTA Schools. Board Member DiGiorgio is not a member of the GTA Board of Directors. Board Member DiGiorgio has no role in negotiating or approving the proposed contract on behalf of GTA, and her compensation would not be affected based on whether the contract is approved or not.

ANALYSIS

Charter Schools & Charter School Operators

Under Education Code Section 47604.1, an “entity managing a charter school” refers to “a nonprofit public benefit corporation that operates a charter school consistent with [Education Code] Section 47604” and is subject to the Act and Section 1090.² AMPS and GTA, as entities managing charter schools (i.e., public charter school operators), are both subject to the Act and Section 1090.

Charter schools are public schools that operate independently from the existing school district structure and are publicly funded. (Education Code Sections 47601, 47610, 47630 et seq.) “Governing officials of a charter school are themselves ‘officers of public schools to the same extent as members of other boards of education of public school districts.’” (101 Ops. Cal. Atty. Gen. 92 (2018), citing *Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1141.) Before Education Code Section 47604.1 was enacted, the Attorney General determined that

² Education Code Section 47604, added by SB 406 (Stats. 2018, ch. 291) prohibited a charter school from operating as, or being operated by, a for-profit corporation after July 1, 2019.

charter schools are government entities subject to the Act and Section 1090. (101 Ops.Cal.Atty.Gen. 92 (2018).)

Section 1090

Under Education Code Section 47604.1, AMPS, as a nonprofit public benefit corporation operating charter schools, qualifies as an “entity managing a charter school” subject to Section 1090. Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of their respective agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 (*Stigall*).) 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 that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646 (*Thomson*).) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) When Section 1090 is applicable to one member of a governing body of a public entity, the prohibition typically 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.)

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 (*Honig*).) An official “makes” a contract if the official participates in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, planning, drawing of plans and specifications. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, 58 Cal.2d at p. 569.) As a member of the AMPS Board, Board Member DiGiorgio is subject to the provisions of Section 1090. Additionally, due to her status as a Board Member, she is presumed to be involved in the making of all contracts by AMPS irrespective of whether she actually participates in the making of the contract. (*Thomson, supra*, 38 Cal.3d at pp. 645, 649.) Thus, the determinative question is whether Board Member DiGiorgio has a financial interest in contract decisions involving AMPS and GTA.

Although Section 1090 does not specifically define the term financial interest, case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallergera* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Honig, supra*, 48 Cal.App.4th at p. 333.) The California Supreme Court in *Lexin v. Superior Court* (2010) 47 Cal.4th 1050 (*Lexin*) stated that the situation “where public officials on behalf of a public entity participate in making a contract with a second entity for which they work, the scenario poses at least the risk that the officials will be compromised by serving ‘two masters.’” (*Lexin, supra*, at p.1075, citing *Thomson, supra*, 38 Cal.3d at p. 645 and fn. 14 [additional citations omitted].)

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. If a remote interest is present, the contract may be made if: (1) the officer discloses the interest in the contract to their public agency; (2) that interest is noted in the agency's official records; and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a).) If a noninterest is present, the contract may be made without the officer's abstention, and a noninterest generally does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

Charter schools share hybrid characteristics of both a government entity and a nonprofit. Neither Section 1090 nor regulations clearly address the circumstances described herein, when two charter school operators seek to contract with each other, and the board member of one operator receives income from the other operator. At issue is whether the income received by Board Member DiGiorgio should be treated as income from a government entity³ or as income from a nonprofit.

The California Legislature has treated charter schools and charter school operators like government entities by subjecting them to public integrity statutes.⁴ At the same time, they are expressly exempt from the laws governing school districts with limited exceptions (Education Code Section 47610) and operate more independently than other public schools or government entities. Education Code Section 47604.1(a) now requires an "entity managing a charter school" to be a nonprofit public benefit corporation formed and organized pursuant to the Nonprofit Public Benefit Corporation Law under Corporations Code Section 5110 et seq. (Education Code Sections 47604 and 47604.1(a).)⁵ In contrast, California government entities are generally governed by the Government Code. In effect, charter school operators function more like a nonprofit organization than a government entity. Accordingly, in applying Section 1090, we must advise that the salary received by Board Member DiGiorgio as an employee of GTA, should be treated as income from a nonprofit organization rather than a government entity when considering whether Board Member DiGiorgio has a disqualifying interest under Section 1090 in a contract between two charter school operators.

³ See remote interest and noninterest exceptions for salary from a government entity in Sections 1091(b)(13) and 1091.5(a)(9).

⁴ Under Education Code Section 47604.1, charter schools and entities managing charter schools are subject to the Ralph M. Brown Act (commencing with Section 54950 et seq.), the California Public Records Act (commencing with Section 7920.000 et seq.), Section 1090 et seq., and the Act (commencing with Section 81000 et seq.). For the purposes of Section 87300, charter schools and entities managing charter schools are considered agencies. (Education Code Section 47604.1(b)(4)(B).)

⁵ On December 26, 2018, the Attorney General issued an opinion concluding that a California charter school's governing body is subject to Section 1090 and the Act. (101 Ops. Cal. Atty. Gen. 92 (2018).) Subsequently, SB 126 (Stats. 2019, chp. 3) added Education Code Section 47604.1, which states that charter schools and entities managing charter schools are subject to Section 1090 and the Act. The reason for the bill was that "the [AG] opinion is only advisory and not legally binding on courts, agencies, or individuals. Absent legislation codifying the [Attorney General] opinion, we will continue to see disputes over how these laws apply to charter schools." (Sen. Com. on Education, Bill Analysis of Sen. Bill No. 126, February 19, 2019.)

Pertinent to this situation is the remote interest exception under Section 1091(b)(1) for employees of nonprofits. Section 1091(b)(1) states that an official will have a remote interest in the contract, where the official's interest is that of a compensated officer or employee of a tax-exempt 501(c)(3) nonprofit. AMPS Board Member DiGiorgio is employed by GTA, a nonprofit that would like to contract with AMPS and is subject to Section 1091(b)(1).

Because Board Member DiGiorgio will have a remote interest in the contract between AMPS and GTA for which she is employed, AMPS may make the agreement; however, Board Member DiGiorgio must disclose her interest in the contract to AMPS; the interest must be noted in the AMPS' Board records; and she must abstain from any participation in the making of the contract. (Section 1091(a).)

Additionally, since the remedy in this situation is for Board Member DiGiorgio to abstain from any participation in the approval of the contract due to her remote interest, we do not need to further analyze the conflict of interest issue raised under the Act. Board Member DiGiorgio's abstention under Section 1091(b)(1) would also satisfy the requirements of the Act, although we note that the Act also requires leaving the room during discussion at any public meeting of the board. (See Regulation 18707.)

If you have other questions on this matter, please contact me at JGin@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Joanna Gin

By: Joanna Gin
Senior Counsel, Legal Division

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