



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3050 • Sacramento, CA 95811

April 1, 2026

Kaitlyn Schwendeman
General Counsel
School & College Legal Services of California
5350 Skylane Boulevard
Santa Rosa, CA 95403

Re: Your Request for Advice
Our File No. A-25-169

Dear Ms. Schwendeman:

This letter responds to your request for advice on behalf of the Windsor Unified School District (“District”) and its Board Trustee Richard Carnation 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.

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 Sonoma 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).)

The Fair Political Practices Commission does not provide advice regarding past conduct (Section 1097.1(c)(2); Regulation 18329(b)(6)(a)). Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter only apply to prospective actions.

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.

QUESTION

Does either the Act or Section 1090 prohibit Board Trustee Carnation or the District from entering into an exclusive negotiating agreement with, or participating in a decision regarding a project with, Gallaher Community Housing, Inc. (“GCH”), a nonprofit organization that Board Trustee Carnation is a board member of, regarding the development of affordable workforce housing on District property?

CONCLUSION

Neither the Act nor Section 1090 prohibits the District from entering into the agreement, nor does either disqualify Board Trustee Carnation from participating in either the agreement or the development project. Under the Act, Board Trustee Carnation has no financial interest. Under Section 1090, Board Trustee Carnation has a noninterest in the agreement with GCH because he is an uncompensated board member of GCH, a nonprofit, and he is not required to abstain from a decision involving GCH. However, this noninterest must be disclosed to the District Board when the exclusive negotiating agreement is considered and noted in the District Board’s official records.

FACTS AS PRESENTED BY REQUESTER

The District offers education from preschool through 12th grade in Sonoma County and employs over 600 individuals, including administrators, teachers, and school staff. Board Trustee Carnation is a member of the District Board of Trustees and an uncompensated board member of the 501(c)(3) nonprofit organization, GCH, which primarily provides affordable housing for individuals and families in Sonoma County. Board Trustee Carnation is also the Chief Executive Officer of Waterworks Industries, Inc., which builds and services pools, lakes, ponds, and fountains. In 2024, the Board previously considered and approved an exclusive negotiating agreement with GCH regarding the development of up to 368 affordable housing units on 11.5 gross acres of District property located at 8955 Conde Lane, Windsor, California (the “Property”), that was formerly Windsor Creek Elementary School until 2019.

The Board approved the exclusive negotiating agreement with GCH at its June 27, 2024, meeting.² Board Trustee Carnation was present in the room but did not participate in the discussion and abstained from the vote. On August 22, 2024, the Board reapproved the exclusive negotiating agreement with GCH, and Board Trustee Carnation recused himself and left the room prior to discussion.³ The exclusive negotiating agreement has since expired.

² The 2024 exclusive negotiating agreement referred to an affordable housing project, not a workforce housing project. In the recitals of the agreement, the project was described as a mixed use development project “that, at a minimum, includes a housing project consisting of approximately 368 units of for-rent residential units that are reserved for households earning not more than 80% of Area Median Income (as defined by the U.S. Department of Housing and Urban Development for the Santa Rosa-Petaluma Metropolitan Statistical Area).”

³ We note that the Fair Political Practices Commission does not provide advice related to past conduct. (See Regulation 18329(b)(6)(A).) While you have indicated that Board Trustee Carnation recused himself from the

At its December 18, 2025 meeting, the Board adopted Resolution No. 26-10 declaring the Property surplus to its needs and finding that the District will not need the Property for educational purposes due to declining enrollment. On January 9, 2026, the District issued a Notice of Availability of the Property for sale. Currently, the Property is being offered under the Surplus Lands Act (Section 54220, et seq.) to affordable housing developers and others identified in the Surplus Lands Act. The Surplus Lands Act gives interested parties 60 days to notify the District of their interest in the Property and then 90 days for the District to negotiate with the interested party(ies). Various statutes expressly authorize school districts to address affordable and/or workforce housing. Depending upon the structure of any agreement reached with an interested party, the District may take advantage of programs available to it under other statutes.

The District would like to enter into a new exclusive negotiating agreement with GCH regarding the development of combined workforce-affordable housing on the Property, and if the parties subsequently agree, a development agreement in connection with the development project. The project will include up to 368 units, all intended for affordable housing, and available to District staff. According to the District, Waterworks Industries, Inc. would not be involved in the development project because the proposed workforce housing project does not include water features.

ANALYSIS

Political Reform Act

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) As pertinent to the facts provided, economic interests under the Act include an interest in:

- Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a).)
- Any source of income aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).) Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10-percent interest or greater. (Section 82030(a).)

previous decision, we express no opinion regarding the District Board decision to approve the prior exclusive negotiating agreement with GCH. Likewise, we express no opinion regarding any previous involvement by Board Trustee Carnation in any such decision.

- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)

Based on the facts presented, Board Trustee Carnation does not have a financial interest within the meaning of the Act resulting from his position as an uncompensated board member of GCH. While Section 87103(d) includes business entities in which the officer is a director, Board Trustee Carnation does not have a business interest in GCH because a nonprofit organization is not a “business entity” as defined by the Act. (Section 82005.)

Board Trustee Carnation has indicated an economic interest in his employer, Waterworks Industries, Inc., as both a business entity and source of income, and may also have interests in customers of the business.⁴

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency.” (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here, a financial effect need not be likely to be considered reasonably foreseeable. “In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.” (Regulation 18701(b).) In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest other than an explicitly involved financial interest, six factors are considered.⁵

⁴ The facts indicate that Board Trustee Carnation is the Chief Executive Officer of Waterworks Industries, Inc. However, information regarding whether he has an ownership interest has not been provided. We must caution that Board Trustee Carnation may have an economic interest in customers of the company as a source of income. Under Section 82030(a), an official’s income “includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10-percent interest or greater.” Nonetheless, no specific customers have been identified, and there is no indication of a financial effect on any customers based upon the facts provided. Accordingly, we do not further analyze disqualification resulting from any financial effect on a customer of the business. To the extent there are any indications a customer may be financially affected by the decision, Board Member Carnation should seek further advice identifying the customer and the potential effect on the customer.

⁵ The six factors identified in Regulation 18701(b) are:

“(1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.

(2) Whether the public official should anticipate a financial effect on the official’s financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

(3) Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.

Based on the facts provided, the business activity of Waterworks Industries, Inc. is limited to building and servicing water features and the company would not bid on or be involved in the project in any way. Moreover, the proposed workforce housing project does not include any water features, such as pools, and the District would not need any business or company to install or maintain a water feature. Therefore, it is not foreseeable that the Board's decision on the workforce housing project will have a financial effect on Board Trustee Carnation's identified economic interests, including his interests in Waterworks Industries, Inc. as a business and source of income. To the extent Board Trustee Carnation has no other economic interests in the decision, the Act's conflict of interest provisions would not prohibit him from participating in discussions and decisions relating to the development project, including the exclusive negotiating agreement.

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. 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.) 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.) Decisions regarding exclusive negotiating agreements involve contracts. (See *Silva* Advice Letter, No. A-16-212.)

(4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with the official's duty to act in the best interests of the public.

(5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

(6) Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on the official's financial interest in formulating a position."

As a member of the District Board, Board Trustee Carnation is subject to the provisions of Section 1090. Additionally, due to his status as a Board Trustee, he is presumed to be involved in the making of all contracts by the District irrespective of whether he actually participates in the making of the contract. (*Thomson, supra*, at pp. 645, 649.) Thus, the determinative question is whether Board Trustee Carnation has a financial interest in contract decisions involving the District and GCH.

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.)

Under the present circumstances, the determinative question is whether the "noninterest" specified in Section 1091.5(a)(8) applies. Section 1091.5(a)(8) establishes that an officer is not interested in a contract if his or her interest is:

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.

According to the facts, Board Trustee Carnation does not receive compensation for his services as a board member of GCH. The primary purpose of GCH is to provide affordable housing for individuals and families in Sonoma County. The District's primary function is to provide education to students. Additionally, the District has declared the Property surplus to its educational needs, and workforce housing does not necessarily support the District's primary function to educate students. However, the Legislature has authorized school districts to use, lease, or sell District real property for workforce housing through various statutes to stabilize and retain the school workforce. (See e.g., SB 1413 (Chapter 732, Statutes of 2016), AB 1157 (Chapter 717, Statutes of 2017, and subsequent statutes).) Thus, an exclusive negotiating agreement regarding the surplus property including provisions for affordable workforce housing serves a legislatively established function of the District, and this function is supported by GCH which was formed for the primary purpose of providing affordable housing, such as affordable workforce housing. Based upon the facts provided, the requirements of Section 1091.5(a)(8) are satisfied, and Board Trustee Carnation will have a noninterest in the contract identified. He may

participate, but he must disclose that he is an uncompensated board member of GCH when the Board considers the exclusive negotiating agreement and resulting development agreement.

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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