



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

July 14, 2026

Salwa K. Bojack
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Office of the Secretary
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

**Re: Your Request for Informal Assistance
Our File No. I-26-001**

Dear Ms. Bojack:

This letter is in response to your request for advice regarding the Political Reform Act and Government Code Section 1090, et seq.¹ 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. Because your question is general in nature, we are treating your request as one for informal assistance.² Please 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 Sacramento 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 apply to representatives of Tribal governments on the California Environmental Protection Agency's (CalEPA) Tribal Advisory Committee (TAC)?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

Section 87104(b) prohibition applies to TAC members Batten, Godfrey, Escobar, Ryan and McDowell, because they receive direct or indirect compensation from the Tribe they represent on the TAC. They are prohibited from acting, for compensation, as an agent or attorney for, or otherwise representing, any other person by making any formal or informal appearance before, or by making any oral or written communication to, CalEPA or the TAC, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing action on a contract, grant, loan, license, permit, or other entitlement for use.

Section 87104 does not apply to TAC members who receive no compensation. Moreover, it is unnecessary to determine if general conflict of interest provisions (other than Section 87104) apply to the TAC members who receive no compensation, because these provisions only apply to the extent it is reasonably foreseeable that the decision will have a material financial effect on an economic interest enumerated in Section 87103. Thus, the general conflict of interest provisions also do not apply to TAC members based on the facts provided.

Similarly, provided there is no other financial interest in the contract, Section 1090 does not generally apply to the three uncompensated TAC members because they are not financially interested in a contract under Section 1090 merely because they represent a Tribe on the TAC. Regarding the five compensated TAC members, we can only generally advise that Section 1090 prohibits them from making or participating in the making of a contract in which the member has a financial interest. Nonetheless, any further determination under Section 1090 is unnecessary as these compensated members are disqualified from taking part in contracts with the Tribe they represent under Section 87104 of the Act.

FACTS AS PRESENTED BY REQUESTER

The TAC was established by a Charter issued by the CalEPA Secretary for Environmental Protection in 2011 to advocate for Tribal perspectives on environmental protection and land stewardship. According to its website, the purpose of the TAC is to discuss environmental issues between California Tribes and CalEPA.

You state that the Tribes frequently engage with CalEPA in grant and contract negotiations. You seek to determine if TAC members may represent their respective Tribes in these negotiations before CalEPA. We asked you whether the TAC members receive compensation from their respective tribes, and you responded as follows:

1. Matt Teutimez (Kizh-Gabrieleno): No. He is not currently compensated by his Tribe in an employment capacity or any other capacity.
2. Noah Williams (Bishop-Paiute): No. He is not currently compensated by his Tribe in an employment capacity or any other capacity.
3. Jill Sherman-Warne (Hoopa): No. She is not currently compensated by her Tribe in an employment capacity or any other capacity.

4. Clifford Batten (Yuhaaviatam): Yes. He serves as his Tribe's Environmental Director and is compensated in his capacity as an employee of the Tribe.
5. Vicente Godfrey (Yuhaaviatam): Yes. He serves as his Tribe's Environmental Air Lead and is compensated in his capacity as an employee of the Tribe.
6. Ron Escobar (Chemehuevi): Yes. He serves as his Tribe's Tribal Historic Preservation Officer and is compensated in his capacity as an employee of the Tribe.
7. Sarah Ryan (not a tribal member of Big Valley): Yes. She serves as Big Valley's Environmental Director and is compensated by Big Valley in her capacity as an employee of the Tribe.
8. Nora McDowell (Fort Mojave): Fort Mojave has a contract with PG&E. She works on this contract and is compensated by PG&E.

Of the eight TAC members, three receive no compensation from their respective Tribes, four members receive compensation from their respective Tribes as Tribe employees, and one member works on a contract between her Tribe and PG&E and is compensated by PG&E.

ANALYSIS

A. The Act.

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using the official's position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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)).

Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. Under Regulation 18700(c)(2), a "member" is defined as follows:

(2) "Member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.

(A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:

(i) It may make a final governmental decision;

(ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.

(B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).

While the TAC is identified as an “advisory” committee, this is not determinative as to whether the TAC has decisionmaking authority. Thus, we note that a member of an advisory committee or board that has decisionmaking authority is a “public official” under the general provisions of the Act. (Section 82048 and Regulation 18700(c)(1) and (2).) In addition to the general provisions of the Act, Section 87104 provides a more specific conflict of interest provision that defines “public official” more broadly and extends a prohibition against taking part in decisions on a contract, grant, loan, license, permit, or other entitlement for use to all members of an advisory body even if the body does not have decisionmaking authority.

Section 87104 provides:

(a) A public official of a state agency shall not, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance before, or any oral or written communication to, the official's state agency or any officer or employee thereof, if the appearance or communication is for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use.

(b) For purposes of this section, “public official” includes a member, officer, employee, or consultant of an advisory body to a state agency, whether the advisory body is created by statute or otherwise, except when the public official is representing the official's employing state, local, or federal agency in an appearance before, or communication to, the advisory body.

1. TAC members compensated by Tribe.

For compensated TAC members, it is unnecessary to consider whether they are public officials under Section 82048 of the Act because Section 87104(b) provides a broader definition of “public official.” Under this broader definition, a public official includes any person defined in Section 82048, and every member of any advisory committee of a state agency, whether the committee is created by statute or otherwise. (See *Travis* Advice Letter, A-96-021.) Thus, as members of an advisory committee of a state agency, TAC’s members are considered “public officials” for purposes of Section 87104. (*Ibid.*)

Section 87104 does not act as a bar to anyone serving on the TAC, but rather applies to each member's conduct once they are on the TAC.³ (See *Geismar* Advice Letter, A-95-407.) Thus, each individual who serves as a member of the TAC is prohibited from acting, for compensation, as an agent or attorney for, or otherwise representing, any other person by making any formal or informal appearance before, or by making any oral or written communication to, CalEPA or the TAC, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing action on a contract, grant, loan, license, permit, or other entitlement for use.

Here, the TAC is an advisory body to CalEPA on environmental issues between California Tribes and CalEPA. TAC's members are therefore "public officials" as that term is defined under Section 87104(b), and they are prohibited from appearances and communications, for compensation, to the state agency they advise regarding any contract, grant, loan, license, permit, or other entitlement for use.

Section 87104(b) provides a narrow exception when the official is "representing the official's employing state, local, or federal agency in an appearance before, or communication to, the advisory body." Federally recognized tribes are sovereign national governments that we have previously determined do not fit within the definition of either a "city," "state" or "federal" "state" agency as contemplated by the Act. (See *Santana* Advice Letter, No. A-01-002; *Battersby* Advice Letter, No. A-98-176.)

Because a Tribe is a sovereign entity and not a state, local, or federal agency, a TAC member representing a Tribe for compensation is representing an "other person," not an exempt agency under Section 87104(b). Section 87104 prohibits TAC members from receiving compensation from their Tribes to influence CalEPA on a contract, grant, loan, license, permit, or other entitlement for use.⁴ Therefore, the Section 87104 prohibition applies to TAC members Batten, Godfrey, Escobar and Ryan, who receive compensation from the Tribes they represent on the TAC.

Additionally, the facts indicate that TAC member McDowell is compensated by PG&E but that the compensation is for work performed under a contract between the Tribe she represents and PG&E. Previously, we have advised that the Section 87104 prohibition on TAC members from communications and appearances for "compensation" includes all forms of compensation, such as salaries from an employer or a third party.⁵ (See *Geismar* Advice Letter, A-95-407.) In this case, it appears that TAC member McDowell's compensation from PG&E under its contract with the Tribe is related to work she is performing as a representative of the Tribe and on the Tribe's behalf. Based on these facts, the compensation received from PG&E for

³ The prohibition in Section 87104 is broad and applies to any communication to the agency, or employees of the agency, for the purpose of influencing action on a contract, grant, loan, license, permit, or other entitlement for use.

⁴ Compensation from tribe is not generally prohibited under the Act, but compensation for an appearance or communication is prohibited under Section 87104.

⁵ Section 87104(b) provides a limited exception where the advisory body member is a public employee and represents their "employing state, local, or federal agency in an appearance before, or communication to, the advisory body."

work on behalf the Tribe must be considered compensation from both PG&E and the Tribe. Therefore, the Section 87104 prohibition also applies to TAC member McDowell. More specifically, Section 87104 prohibits TAC member McDowell from making any appearance or communication before the TAC for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use for either PG&E or the Tribe.

2. TAC members not compensated by Tribe.

As stated above, Section 87104 applies only to the extent that public officials receive compensation for their appearance or communication. So long as uncompensated TAC members are not receiving any compensation from the Tribe they represent, or for work performed on the tribe's behalf from a third party, the Section 87104 prohibition does not apply to TAC members Teutimez, Williams, or Sherman-Warne.

Regarding the general conflict of interest provisions of the Act, we also note that public officials, as more narrowly defined by Section 82048, are prohibited from taking part in a decision only to the extent it is reasonably foreseeable that the decision will have a material financial effect on the official's economic interests as enumerated in Section 87103 of the Act. Potentially disqualifying economic interests under the Act include only the following:

- Any real property in which the public official has a direct or indirect interest of at least \$2,000. (Section 87103(b).)
- Any business entity in which the public official has a direct or indirect investment worth at least \$2,000 and any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any management position. (Section 87103(a) and (d).)
- Any source of income, such as a business entity, from which the official has received income of \$500 or more within 12 months before the decision. This also includes income from any business entity client of at least \$500, provided to and received by the public official within 12 months before making the decision. (Section 87103(c).)
- Any donor of gift(s) amounting to at least \$590 within 12 months before making a decision. (Section 87103(e).)
- A public official's finances or those of a member of their immediate family. (Section 87103).)

As stated above, the general conflict of interest provisions of the Act (the provisions other than Section 87104) apply only to the extent that the TAC has decisionmaking authority. However, it is unnecessary to determine whether the TAC has decisionmaking authority and whether the uncompensated members of the TAC are subject to these general provisions of the Act. Assuming the TAC does indeed have decisionmaking authority, members of the TAC who are not compensated by the Tribe they represent, or for work on behalf of the Tribe from a third party, do not have an enumerated economic interest in the Tribe and are not generally prohibited from taking part in decisions with a financial effect on the Tribe provided the member has other economic interest in the decisions.

B. 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 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. City of Taft* (1962) 58 Cal.2d 565, 569.) 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) 103Cal.App.3d 191, 197.)

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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Finally, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647- 649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

Section 1090 applies to members of advisory bodies if they participate in the making of a contract through their advisory function. (*City Council v. McKinley*, (1978) 80 Cal.App.3d 204; 82 Ops.Cal.Atty.Gen. 126 (1999).) The terms “contract” and “financial interest” are broadly interpreted, and grant agreements are generally considered contracts under Section 1090. (See, e.g., *People v. Honig* (1996) 48 Cal.App.4th 289, 333; and 89 Ops.Cal.Atty.Gen. 258, 260-262 (2006).) In *Lexin v. Superior Court* (2010) 47 Cal. 4th 1050, 1075, the California Supreme Court explained what constitutes a financial interest under Section 1090:

The term “financially interested” in section 1090 cannot be interpreted in a restricted and technical manner. The defining characteristic of financial interest is whether it has the potential to divide an official’s loyalties and compromise the undivided representation of the public interests the official is charged with protecting. Thus, that the interest “might be small or indirect is immaterial so long as it is such as deprives the [people] of his overriding fidelity to [them] and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good.”

[Citations omitted.]

When an official is a member of a board or commission that has the power to execute the contract, the member is conclusively presumed to be involved in the making of the agency’s contracts, irrespective of whether the member actually participates in the making of the contract. (*Thomson v. Call, supra* at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen 49, *supra*.)

Barring any other financial interest in the contract, Section 1090 does not generally apply to the three uncompensated TAC members because they are not financially interested in the contract under Section 1090 merely because they represent the Tribe on the TAC. Regarding the five compensated TAC members, we cannot provide specific advice under Section 1090 because you have not identified a contract. We can only generally advise that Section 1090 prohibits them from making or participating in the making of a contract in which the member has a financial interest, unless an exception applies. However, as noted above, these compensated TAC members are prohibited under Section 87104 of the Act from taking part in any decision involving a contract with the Tribe notwithstanding Section 1090. If you need additional assistance regarding the application of Section 1090 to a specific contract, you should seek further advice once the contract is identified.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M . Feser Jr .

By: John M. Feser Jr.
Senior Counsel, Legal Division

JF:aja