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

May 18, 2026

Kevin Briggs
Acting County Counsel/Risk Manager
Mariposa County Counsel
PO Box 189
Mariposa, CA 95338

Re: Your Request for Advice
Our File No. A-26-009

Dear Mr. Briggs:

This letter responds to your request for advice on behalf of Mariposa County Supervisor Jennifer Kiser 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. Additionally, we also offer no opinion regarding the application of Section 29708.

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 Mariposa 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 Mariposa County ("County") from hiring and paying Supervisor Kiser's spouse's company, Mariposa Mechanical Service, for refrigerator and freezer repair services where the County's purchasing agent and assistant purchasing agents have the authority to hire for the services and the County auditor pays the invoices without any action or involvement by the Board of Supervisors ("Board")?

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[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

Under the Act, it is reasonably foreseeable that County decisions to hire and pay Mariposa Mechanical Service would have a material financial effect on Supervisor Kiser's business and source of income interests in her spouse's business. She may not make, participate in, nor use her official position to influence, in any manner, the County's decisions. Section 1090 does not prohibit the County from entering into contracts with Mariposa Mechanical Service for refrigerator and repair services and paying for those services to the extent that the transaction is within the County purchasing agent's and assistant purchasing agents' independent statutory authority, and there is no Board involvement. We caution that the Commission's advice is limited to the Act and Section 1090, and does not extend to other statutes or laws that may affect the County's ability to pay Mariposa Mechanical Service for these services.

FACTS AS PRESENTED BY REQUESTER

Jennifer Kiser was elected to the Board of Supervisors of Mariposa County in 2024 and assumed office on January 7, 2025. Supervisor Kiser's spouse, Peter Kiser, is a licensed contractor and the sole owner of Mariposa Mechanical Service, specializing in Heating Ventilation and Air Conditioning ("HVAC") systems, and has conducted business within the County for at least 20 years.

Mr. Kiser installed a walk-in refrigerator and freezer at the Mariposa Senior Center, which is leased and operated by the County, over 20 years ago. Since the installation, Mr. Kiser has responded to the County's calls to service or maintain the walk-in refrigerator and freezer on an on-call basis. There is no regular maintenance schedule or written maintenance contract. Service calls are requested by the appropriate County department heads as needed, usually on an emergency basis, such as when the walk-in refrigerator or freezer malfunctions or fails to maintain food at the proper temperature. The service calls are usually resolved by adding freon to the appliances or performing other maintenance. Service calls occur one to three times per year, and each call costs between $500 to $1,600. Mr. Kiser also services the refrigeration units at the County jail in the same manner as the Mariposa Senior Center. Mr. Kiser invoices the County for services rendered. In 2025, Mr. Kiser serviced the walk-in refrigerator and freezer at the Mariposa Senior Center, but has not yet submitted an invoice, pending Commission advice.

The Board does not act on individual payments for refrigerator and freezer repair services because they fall within the County purchasing agent's and assistant purchasing agents' purchasing authority. Under the authority of state law, Section 25500 et seq., the Board may employ a purchasing agent and assistant purchasing agents. Under Sections 25501 and 25502.3, the County purchasing agent may hire contractors to perform services, up to a specified annual aggregate dollar amount, adjusted annually for inflation. The County adopted an ordinance pursuant to Section 25500 et seq. that[2] establishes the County administrative officer as the

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[2] Mariposa County Code Section 3.08.020 reads as follows:

County purchasing agent and each department head as an assistant purchasing agent for their respective department. The County's purchasing policy authorizes the purchasing agent and assistant purchasing agents to collectively and individually implement procurement principles in their departments and the County at large.

The Board also established a purchasing policy specifying the maximum amounts County purchasing agents and assistant purchasing agents may spend without Board approval. The purchases must be made within the budgets approved by the Board and may include agreements approved as to form by County Counsel. For services that do not involve public works, the County administrative officer has purchasing authority up to $60,000 and assistant purchasing agents or department heads have purchasing authority up to $20,000. The County auditor pays these invoices, without Board action, and the payment details are subsequently provided as an informational item at Board meetings.

ANALYSIS

The 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."

Making, Participating in Making, or Using an Official Position to Influence a Decision

Regulation 18704 includes definitions for "making a decision," "participating in a decision," and "using [an] official position to influence a decision." A public official "makes a governmental decision" if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency. (Regulation 18704(a).) This includes the decision to approve or pay an invoice. (See *Smith* Advice Letter, No. A-16-188.) A public official "participates in a governmental decision" if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening

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A. Pursuant to Section 25500 et seq. of the Government Code and consistent with provisions of Section 2.32.040 of this code, the office of purchasing agent is established and consolidated with the office of county administrative officer. The county administrative officer serves, ex-officio, as the purchasing agent for the county.
B. Each department head serves, ex-officio, as an assistant purchasing agent with respect to services, supplies and equipment for his or her department as contained in the approved budget.
C. The board shall have the authority to appoint other assistant purchasing agents by resolution.
D. The purchasing agent and assistant purchasing agents may authorize staff under their direct supervision and responsibility to process purchases within their authority.

substantive review. (Regulation 18704(b).) A public official "uses an official position to influence a governmental decision" if the official:

> (1) Contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision; or
>
> (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contract.

(Regulation 18704(c).)

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.) Interests that are potentially disqualifying are enumerated in Section 87103 and include:

- An interest in a business entity in which the official has a direct or indirect investment of $2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

- An interest in a source of income to the official, or promised income, which aggregates to $500 or more within 12 months prior to the decision. (Section 87103(c)).

For purposes of Section 87103, "indirect investment or interest" includes any investment or interest owned by the official's spouse or by a business entity that the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) Additionally, Section 82030(a) specifies that "income" includes a pro rata share of any income of any business entity the official or the official's spouse owns, directly, indirectly, or beneficially, a 10-percent interest or greater. Supervisor Kiser has a business entity interest and a source of income interest in Mariposa Mechanical Service due to her spouse's ownership of the business.[3]

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[3] The official also has a financial interest in her personal finances. (Section 87103.) However, where we conclude that the decision will have a reasonably foreseeable financial effect on the official's financial interest in a business entity or real property, any related effect on the official's personal finances is not considered separately. (Regulation 18702.5.)

Foreseeability and Materiality

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision, as we have here. It reads as follows:

> 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. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

Business Entity and Source of Income of Interest

The reasonably foreseeable financial effect of a government's decision on an official's interests in a business entity and source of income interest is material if the business will be financially affected under the business materiality standards in Regulation 18702.1. (See Regulation 18702.3(a)(4).) Under Regulation 18702.1(a), the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity is material if the entity is explicitly involved as a named party in, or the subject of, the decision, including one in which the entity:

- Offers to sell a product or service to the agency. (Regulation 18702.1(a)(1)(B).)
- Bids on, or enters into, a contract with the agency, or is a subcontractor on the bid or contract. (Regulation 18702.1(a)(1)(C).)
- Is the named or intended manufacturer or vendor of any products to be purchased by the agency with an aggregate cost of $1,000 or more in any 12-month period. (Regulation 18702.1(a)(1)(D).)

Since Mariposa Mechanical Service is a party to the proposed contract with the County, it is explicitly involved and under the standards in Regulation 18702.1(a)(1)(B) and (C)),[4] it is reasonably foreseeable that the County's decision to hire Mariposa Mechanical Service for refrigerator and freezer repair services and to pay any resulting invoices will have a material financial effect on Supervisor Kiser's financial interests. Supervisor Kiser cannot make, participate in, or attempt to use her position to influence the County's decision to hire and pay Mariposa Mechanical Service as those terms are defined above.

Here, the County's established procedure is that for services within the specified annual aggregate dollar amount, the purchasing agent or assistant purchasing agents hire Mariposa

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[4] The County's purchase of parts for a refrigerator or freezer unit, or the unit itself, falls under Regulation 18702.1(a)(1)(D).

Mechanical Service, the auditor pays the invoices, and payment details are subsequently provided as an informational item at Board meetings without action by the Board. So long as the purchasing and payment decisions are within the purchasing agent's, assistant purchasing agents', and auditor's authority, are only brought to the Board as "informational items" and no Board action is taken, Supervisor Kiser is not required to disclose her interest and recuse herself from the reading of the item. We note that even where the Board is not involved in a decision, she is prohibited from contacting or appearing before any County official or employee for the purpose of influencing a decision.

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.)

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.) "[M]aking or participating in making a contract" has been broadly construed to include those instances where a public official has influence over the contract or its terms. (See 80 Ops.Cal.Atty.Gen. 41 (1997).) Notably, when members of a public board, commission, or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by their agency, regardless of whether the member actually participates in the making of the contract. (*Thomson*, *supra*, 38 Cal.3d 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 (2006).)

For purposes of Section 1090, we must "consider the circumstances surrounding the making of the contracts, the matters to which they relate, and the situation of the parties to the contracts." (*Honig*, *supra*, 48 Cal.App.4th at p. 351.) In the *Koon* Advice Letter, No. A-23-160, the Commission noted that for the purposes of Section 1090, there was no question that the agency made a contract with a board member's auto mechanic garage each time the agency took a vehicle to the garage for service and subsequently pays the garage for that service.[5] The

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[5] See *Koon* Advice Letter, No. A-23-160, fn. 5.

County's service arrangement for on-call repair service by Mariposa Mechanical Service is in the nature of a contract, and thereby subject to Section 1090.

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. Vallerga* (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.) Relevant to these facts, it is well established that the financial interest of one spouse will be attributed to the other spouse for purposes of section 1090. (*Thorpe v. Long Beach Cmty. College Dist.* (2000) 83 Cal.App.4th 655, 659; 85 Ops.Cal.Atty.Gen. 34, 36 (2002); 69 Ops.Cal.Atty.Gen. 257, 258, fn. 5 (1986).) Therefore, as the spouse of the sole owner of Mariposa Mechanical Service, Supervisor Kiser has a financial interest in the County's service arrangements with Mariposa Mechanical Service.

We advise above that under the Act Supervisor Kiser is prohibited from participating in any manner in County decisions to hire or pay Mariposa Mechanical Service. At issue is whether Section 1090 prohibits the County from making these service arrangements due to Supervisor Kiser's financial interest.

The Attorney General has opined that a county purchasing agent authorized under Section 25501 was not prohibited from contracting with a county supervisor's business for vehicle towing services and supplies under Section 1090. (57 Ops.Cal.Atty.Gen. 458, 459 (1974).) In that matter, the board of supervisors had a designated county purchasing agent with authority to make purchases at a limited amount under Section 25500 et seq. and the county wished to obtain towing services and service station supplies from a county supervisor who owned a service station. (*Id*. at pp. 459- 460.) Citing prior opinions, the Attorney General concluded that the county purchasing agent had independent authority to contract, and thus could execute a contract with the county supervisor for goods or services without violating Section 1090 because the board of supervisors would not be participating in the making of the contract. (*Id*. at p. 461 ["The significant fact in each of these [prior] opinions is the independent status of the party contracting on behalf of the governmental agency."].)[6] We caution, however, that the Attorney General found that the invoice could not be paid due to a statute that is outside the jurisdiction of the Commission, and we do not advise on this statute.[7] The advice provided in this

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[6] For example, the Attorney General found that where a school district superintendent did not have "independent authority" to approve a promotion for a district board member's spouse or to lease equipment from a board member's spouse's employer, Section 1090 prohibited the transactions. (87 Ops.Cal.Atty.Gen. 9 (2004).) "Independent authority" was not established because the superintendent's contractual powers remained subject to the review and control of the district board, and state law required all contracts to be ratified by the board. (*Id*. at p. 12.)

[7] The Attorney General's Office opined that Section 29708 prohibits a county supervisor from presenting a claim to the county for payment for towing services provided to the county, and prohibits a county officer from submitting claims to the county for payments under a contract even though such a contract was not prohibited by

letter is limited to Section 1090 and the Act and we provide no advice on the application of Section 29708. Supervisor Kiser may wish to seek an opinion from the Attorney General as to the applicability of the prohibition in Section 29708.

Here, the arrangement pursuant to the County's ordinance is similarly authorized under Section 25500 et seq. and sufficient to avoid a Section 1090 prohibition. The Board has established a County purchasing agent and assistant purchasing agents pursuant to Section 25500 et seq. The County purchasing agent and assistant purchasing agents, not the Board, independently hire the contractors for services and approve the payment of invoices, under their purchasing authority. The County auditor pays the invoices, and payment details are subsequently provided as an informational item at Board meetings. According to the facts, the Board does not act in any manner on individual payments for refrigerator and freezer repair services.

Therefore, so long as the County purchasing agent and assistant purchasing agents have independent authority to act on behalf of the County under Section 25500 et seq. and does so within their purchasing authority and without Board involvement, Section 1090 does not prohibit the County from retaining Mariposa Mechanical Service's services and for the County auditor to pay for these services.[8]

This advice should be narrowly interpreted, as it relies on similar facts based on the Attorney General opinion, 57 Ops.Cal.Atty.Gen. 458 (1974), *supra*, and the application of Section 25500 et seq. 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

Section 1090. (57 Ops.Cal.Atty.Gen. *supra*, at pp. 462, 465 (1974); see also 46 Ops.Cal.Atty.Gen. 112 (1965).) Section 29708 states: "Except for his own service, no county officer or employee may present any claim for allowance against the county. No county officer or employee may in any way, except in the discharge of his official duty, advocate the relief asked in a claim made by any other person."

[8] Accordingly, we need not analyze whether a statutory exception to a Section 1090 prohibition, such as a "remote interest," as defined in Section 1091 applies. However, in response to your question as to whether Supervisor Kiser's interest in her spouse's income is a remote interest under Section 1091(b)(8), we note that Mariposa Mechanical Service is not a "supplier of goods or services to the contracting party," but the contracting party itself, and the remote interest does not apply. (See 97 Ops. Cal. Atty. Gen., 70, 74-75 (2014); *Marker* Advice Letter, No. A-23-007.)