



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

March 4, 2026

Conor W. Harkins
Colantuono, Highsmith, Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945

Re: Your Request for Advice
Our File No. A-26-010

Dear Mr. Harkins:

This letter responds to your request for advice on behalf of City of Colfax (“City”) Mayor Caroline McCully regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, *et seq.*¹ Please note that we are only providing advice under the conflict of interest provisions of 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 Placer 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.

QUESTION

Under the Act and Section 1090, may Mayor Caroline McCully take part in decisions related to providing grants from the City Council's Economic Development Fund, given that Mayor McCully also serves as the non-compensated President of Colfax Railroad Days, Inc. ("Railroad Days")?

CONCLUSION

Yes. Under the Act, Mayor McCully may take part in decisions related to providing grants from the City Council's Economic Development Fund because she does not have a financial interest in the decisions. With respect to Section 1090, because Mayor McCully does not receive income from Railroad Days, and has no other financial interest in Railroad Days, the noninterest exception under Section 1091.5(a)(8) applies and she is not disqualified from taking part in decisions related to providing grants from the City Council's Economic Development Fund. However, Mayor McCully must ensure that her interest in Railroad Days is noted in the City's official records.

FACTS AS PRESENTED BY REQUESTER

The City Council's annual budget appropriates \$20,000 to \$30,000 for economic development (the "Economic Development Fund"). The City Council uses the Economic Development Fund to support several popular, recurring events within the City. It distributes the funds to the organizations that put on the events. The City Council also uses the Economic Development Fund to support organizations that contribute to the community. For example, the City Council has approved grants to help refurbish the gym at the Sierra Vista Community Center, to upgrade the sound system at Colfax High School, and to provide seed money for the Historic Colfax Downtown Association. Grants from the City's Economic Development Fund are necessarily limited by the annual appropriation by the City Council. Once the funds are granted to one organization, there are no more funds for other organizations. The City has a general interest in providing for the health, safety, and welfare of its community. That interest includes preserving its railroad heritage and supporting private organizations in that mission.

Colfax Railroad Days, Inc. is a California non-profit, public benefit corporation that qualifies as a tax exempt organization under Internal Revenue Code Section 501(c)(3) ("Railroad Days"). Railroad Days' primary purpose is to preserve the City's rich railroad history, specifically its vital role in constructing the Transcontinental Railroad. Railroad Days puts on an eponymous event in the City every September. Railroad Days has also organized or helped organize events in the City for the Fourth of July and winter holidays. These events are all free of charge and open to the general public. Railroad Days has been granted funds from the City's Economic Development Fund since at least 2015.

Mayor McCully was appointed to the City Council in June 2023 and elected to the City Council for a two-year term in November 2024. She is also an officer of Railroad Days, serving as its President, a position she has held since September 2023. She receives no compensation as President of Railroad Days.

ANALYSIS

The Act

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use the official's position to influence a government decision in which 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 an interest specified in Section 87103, including:

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

The Act defines "business entity" to mean any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. (Section 82005.)

Mayor McCully serves as President of Railroad Days and does not receive any compensation for this position. Since Railroad Days is not operated for profit, it is not considered a business entity under the Act. Accordingly, to the extent Mayor McCully has no other financial interest in the decision, the Act's conflict of interest provisions would not prohibit her from taking part in decisions related to providing grants from the City Council's Economic Development Fund.

Section 1090

Under Section 1090, 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 any financial interests, other than perhaps a remote or minimal interest,

which would prevent the official involved from exercising absolute loyalty and undivided allegiance in furthering the best interests of” their respective agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) 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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 649.)

Section 1090 applies to any grants the city council wishes to make to a non-profit corporation. (See *People v. Honig* (1996) 48 Cal.App.4th 289 [rejecting a claim that a grant was not a contract within the meaning of section 1090] and 85 Ops.Cal.Atty.Gen. 176 (2002).) However, the Legislature has created various statutory exceptions to the Section 1090 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. Noninterests under Section 1091.5 are “interests that, while technically within the scope of the financial interests covered by section 1090, as a practical matter do not raise the sorts of conflict of interest problems with which section 1090 is concerned and thus are statutorily excluded from its purview.” (*Lexin v. Superior Ct.* (2010) 47 Cal. 4th 1050, 1073-74.)

One such noninterest includes Section 1091.5(a)(8) which provides that an officer shall not be deemed to be interested in a contract where the officer’s interest is that of a non-compensated officer of a non-profit, 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.

Based on the facts provided, Mayor McCully serves as President of Railroad Days, a non-profit, tax exempt corporation, and is not compensated for her work. Railroad Days’ primary purpose is to preserve the City’s rich railroad history, specifically its vital role in constructing the Transcontinental Railroad. To accomplish this purpose, Railroad Days puts on an eponymous event in the City annually that is free of charge and open to the general public. The City also has an interest in achieving this purpose as it has a general interest in providing for the health, safety, and welfare of its community which includes preserving its railroad heritage and supporting private organizations in that mission. To accomplish this purpose, the City Council uses the Economic Development Fund to support several popular, recurring events within the City. Railroad Days has previously been a recipient of funds from the City Council’s Economic Development Fund dating back to 2015.

Accordingly, Railroad Days’ primary purpose supports the functions of the City and Mayor McCully has a “noninterest” in Railroad Days as an uncompensated officer of the organization. As long as Mayor McCully’s interest is noted in the City Council’s official records, and she does not have any other economic interests involved, Section 1090 does not prohibit her

from taking part in decisions related to providing grants from the City Council's Economic Development Fund.

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

Sincerely,

Dave Bainbridge
General Counsel

JennaRinehart

By: Jenna C. Rinehart
Senior Counsel, Legal Division

JR:aja