



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

May 19, 2026

Timothy J. Carmel
Carmel Naccasha
694 Santa Rosa Street
San Luis Obispo, CA 93401

**Re: Your Request for Informal Assistance
Our File No. I-26-011**

Dear Mr. Carmel:

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. We also provide no advice regarding any restrictions on incompatible activities imposed by a government agency. 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 San Luis Obispo 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).)

QUESTIONS

Whether the Act or Section 1090 would generally prohibit Cayucos Sanitary District (the District) Board of Directors member Justin Smith from taking part in discussions and decisions regarding the County of San Luis Obispo (the County), where Director Smith is employed in the

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).)

County's Public Works Department, and where he is assigned to a District ad hoc committee that evaluates water issues that relate to his County job.

CONCLUSIONS

Under the Act, barring any other economic interest in the decision, Director Smith is not generally prohibited from taking part in decisions regarding the County. Director Smith does not have a source of income interest in the County as his employer because government salary from the County is not "income" as defined in the Act. However, we cannot provide specific advice under the Act because you have not identified a governmental decision that is at issue or any other economic interest Director Smith may have. If you need assistance regarding the application of the Act to a specific governmental decision, then you should contact us for further advice.

We cannot provide specific advice under Section 1090 because you have not identified a contract. We can only generally advise that Section 1090 prohibits Director Smith from making or participating in the making of a contract in which he has a financial interest, unless an exception applies. 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.

FACTS AS PRESENTED BY REQUESTER

The District is located in the unincorporated area of San Luis Obispo County. Justin Smith is a member of the District Board of Directors and is also employed by the County as a Chief Plant Operator Grade 3 in the Public Works Department.

The District Board recently had agenda items related to matters involving the County. Director Smith abstained from consideration of those items based on his concerns about potential conflicts of interest. Also, at the last Board meeting, Director Smith was re-assigned to the Board's Recycled Water Opportunities Ad Hoc Committee (the Committee). The Committee will be evaluating options for use of recycled water from the District's Water Resource Recovery Facility, which treats the District's wastewater. Director Smith has provided the following examples of some types of uses of recycled water:

Recycled water is often provided to water purveyors to offset water usage, replenish ground water basins or as an alternative water source. A specific example would be in Los Osos, California. The County's Public Works Department provides recycled water to an elementary school to water fields instead of using potable water. There is a reimbursement agreement between the County and Golden State Water Company. The County reimburses Golden State Water Company for some lost revenue, making the arrangement agreeable to both parties.

You state that there are currently no specific uses or programs related to recycled water that have been identified involving Director Smith's employer, the County, but there is the potential that such uses involving the County may arise in the future. You anticipate that there will be future agenda items that will come before the District Board involving matters relating to the County, as well as issues related to recycled water that the Committee might consider.

ANALYSIS

A. 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 public official’s official 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.) Among those specified economic interests relevant to the facts provided is:

Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$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).)

Here, Director Smith receives government salary income from the County, a local government agency. The definition of income under the Act expressly excludes “salary and reimbursement for expenses and per diem received from state, local or federal government agency” (Section 82030(b)(2).) Regulation 18232(a) states that, for purposes of Government Code section 82030(b)(2):

“Salary” from a state, local, or federal government agency means any and all payments made by a government agency to a public official, or accrued to the benefit of a public official, as consideration for the public official’s services to the government agency. Such payments include wages, fees paid to public officials as “consultants” as defined in Regulation 18700.3, pension benefits, health and other insurance coverage, rights to compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and similar benefits.

Generally, under the Act, therefore, Director Smith’s salary from the County is not income and he does not have a disqualifying conflict of interest in governmental decisions regarding the County resulting from the receipt of governmental salary. However, we cannot provide specific advice under the Act because you have not identified a governmental decision that is at issue or any other economic interest Director Smith may have. If you need assistance regarding the application of the Act to a specific governmental decision, then you should contact us for further advice.

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 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.) 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, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) An officer is conclusively presumed to be involved in the making of agency contracts when the officer is a member of a board or commission that has the authority to execute the contract at issue. (*Id.* at pp. 645 and 649.) Significantly, 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 the contract. (*Id.* at pp. 647-649.)

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. Under Section 1091(b)(13) a public officer has a “remote interest” where the interest is “[t]hat of a person receiving salary, per diem, or reimbursement for expenses from a government entity.” Additionally, under Section 1091.5(a)(9), an officer or employee shall not be deemed to be interested in a contract where the officer’s interest is:

That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

In *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1081, the California Supreme Court determined that this exception applies when “the contract involves no direct financial gain, does not directly affect the official’s employing department, and is only with the general government entity for which the official works.” Thus, an official or employee has a noninterest in the government-entity employer under Section 1091.5(a)(9), provided that: (1) the contract at issue involves no direct financial gain to the official or employee, (2) the contract does not affect the official’s or employee’s department, (3) the interest is disclosed to the body or board at the time the contract is considered, and (4) the interest is noted in the body or board’s official record.

We cannot provide specific advice under Section 1090 because you have not identified a contract. We can only generally advise that Section 1090 prohibits Director Smith from making or participating in the making of a contract in which the member has a financial interest, unless

an exception applies. 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 jf eser@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. F eser Jr.

By: John M. F eser Jr.
Senior Counsel, Legal Division

JF:aja