



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

August 25, 2026

Joanna Powell
General Counsel
Santa Barbara Unified School District
720 Santa Barbara Street
Santa Barbara, CA 93101

**Re: Your Request for Advice
Our File No. A-26-044**

Dear Ms. Powell:

This letter is in response to your request for advice regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under 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 Santa Barbara 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 William Banning, President of the Santa Barbara Unified School District's Board of Trustees, who performs contract work for Leadership Associates, a California LLC (the Company), have a conflict of interest under Section 1090 in a prospective contract between the District and the Company? If so, does an exception apply that would allow the making of the contract?

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

President Banning has a conflict of interest under Section 1090, however the “remote interest” exception under Section 1091(b)(2) applies. Section 1090, therefore, does not prohibit the District from entering into a future contract with the Company.²

FACTS AS PRESENTED BY REQUESTER

The Santa Barbara Unified School District is a K-12 public school district located in Santa Barbara County, California. The District is governed by a five-member Board of Trustees. William Banning was appointed to the Board in January 2023 to fill a vacancy. He was elected to a four-year term in November 2024 and currently serves as Board President.

Since January 2018, President Banning has also worked as an independent contractor for Leadership Associates, a California LLC (the Company) founded in 1996 that provides a range of services to school districts, including executive searches, leadership development programming, and governance workshops.

The organization operates with 54 individuals. Four are W-2 employees who serve in executive support roles. Twenty-six are Executive Development Consultants who work exclusively on the Company’s non-search services. Fourteen are members of the LLC, holding ownership interests and governance responsibilities. And ten individuals, including President Banning, serve as independent contractors who receive per-project, fee-sharing compensation; they hold no ownership interest and exercise no governance responsibilities.

The work that President Banning performs for the Company includes facilitating professional development programming that the Company offers to its general client base. The District is considering whether it may contract with the Company for services such as leadership development programming and other professional services that it offers.

ANALYSIS

Under Section 1090, district officers “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 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.) 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

² In light of the conclusion that President Banning must recuse under Section 1090, it is unnecessary to further consider whether he may take part under the Act in any decision regarding a contract between the District and the Company. However, we note that it does appear that President Banning is also disqualified under the Act, and that the Act also requires a board member to leave the room prior the consideration of a matter at a public meeting in which the board member must recuse. (See Regulation 18707.)

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.)

Section 1090 prohibits the use of a public position for self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124 [independent contractor leveraged his public position for access to city officials and influenced them for his pecuniary benefit]; *California Housing Finance Agency v. Hanover* (2007) 148 Cal.App.4th 682, 690 [“Section 1090 places responsibility for acts of self-dealing on the public servant where he or she exercises sufficient control over the public entity, i.e., where the agent is in a position to contract in his or her official capacity”]; *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090 [The purpose of Section 1090 is to prohibit self-dealing, not representation of the interests of others].)

President Banning is subject to Section 1090’s conflict of interest provisions and would be making a contract if the District entered into a contract with the Company. The primary question, therefore, is whether President Banning would have a financial interest in a contract between the District and the Company and, if so, whether any exception to Section 1090 would allow the District to enter a contract with the Company.

A. Financial Interest.

“Financial interest” under Section 1090 is broadly applied to include grants or contracts that may directly or indirectly benefit the officer. The California Supreme Court has explained what constitutes a financial interest under Section 1090:

[T]he term “financially interested” in section 1090 cannot be interpreted in a restricted and technical manner. (*People v. Honig, supra*, 48 Cal.App.4th at p. 315.) The defining characteristic of a prohibited 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. (See *Stigall v. City of Taft, supra*, 58 Cal.2d at p. 569.) 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.” (*Terry v. Bender* (1956) 143 Cal. App. 2d 198, 208 [300 P.2d 119]; see also *Thomson v. Call, supra*, 38 Cal.3d at p. 645 [direct and indirect interests are equally prohibited].)

(*Lexin, supra*, at p. 1075.)

Here, President Banning works as an independent contractor for the Company. Based on the facts provided, he receives per-project, fee-sharing compensation and he has no ownership interest and exercises no governance responsibilities for the Company. Under Section 1090, whether or not he performs work on any proposed District projects or receives a benefit from a

contract between the District and the Company is not determinative for the purpose of whether President Banning has an interest in the Company's contracts. (See *ibid.*) In this case, President Banning has a business relationship with the Company as an independent contractor. His interest as an independent contractor for the Company is directly tied to an interest in the Company and its continuing financial success. Therefore, President Banning has a financial interest in the Company's contracts, including any contract with the District.

President Banning, therefore, has a financial interest in the Company and may not participate in any decisions related to the execution of a contract between the District and the Company. Moreover, under Section 1090, a member of a public agency's governing body is conclusively presumed to participate in the making of a contract under the governing body's authority, regardless of whether the member in fact participates in the making of that contract. (*Thomson, supra*, 38 Cal.3d at pp. 649-650.) Accordingly, Section 1090 prohibits President Banning from participating in, and the District from entering into, an agreement between the District and the Company unless an exception applies.

B. Remote Interest.

Statutory exceptions to Section 1090 exist where the financial interest involved is a "remote interest" or a "noninterest." The exception that may apply under the facts provided here is the remote interest set forth in Section 1091(b)(2).

Section 1091(a) provides:

An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Section 1091(b)(2) defines a "remote interest" to include in relevant part:

That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

The statute was amended in 1963 to insert "or agent" into the clauses describing who may invoke the exception, while leaving the threshold language as "10 or more other employees." (Stats. 1963, ch. 906; see also Stats. 1959, ch. 427.)

Here, based on the facts provided, President Banning is an independent contractor for the Company with authority to represent the Company in his consultation services provided to the

Company's clients, who are third parties. President Banning is authorized to represent the Company in "dealings with third persons," and is thus an "agent" under Section 1091(b)(2). (See *Frazer-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 216-217.)

The facts provided further indicate that President Banning was an employee or agent of the Company for at least three years prior to taking office in January 2023, that he does not own more than 3 percent shares of stock in the Company, and that he would have no involvement in the District's decision to engage the Company in any prospective contract between the District and the Company. The remaining question is whether the "10 or more other employees" requirement is satisfied when the Company's workforce consists almost entirely of consultants.

The "10 or more other employees" requirement is intended to ensure that the contracting party is of meaningful organizational scale so that the official's interest is attenuated. A strict interpretation limiting the requirement to only W-2 employees would render the exception unavailable to any professional services organization structured as an LLC staffed by consultants regardless of the actual number of individuals performing the organization's work. This result would be inconsistent with the purpose of the statute.

The Commission has previously interpreted related language in Section 1091 broadly to effectuate the legislative purpose. In the *Nerland* Advice Letter, No. A-19-014, we concluded that the remote-interest exception in section 1091(b)(1), which applies to an "officer or employee" of a nonprofit, extends to an independent contractor of the nonprofit. In *Nerland* we explained:

While an independent contractor is distinguishable from a business's regular employees, an independent contractor is still employed by the contractual employer under a broad definition of "employment." Moreover, there is no reason to categorically exclude independent contractors from the remote interest exception in Section 1091(b)(1). In many cases, an independent contractor is performing essentially the same work that an employee might perform for a 501(c)(3) organization, and generally an independent contractor's interest in his or her contractual employer is more attenuated than a regular employee's interest. Accordingly, there is no public interest served in excluding an independent contractor from Section 1091(b)(1) and there is no reason to believe that the Legislature intended to do so in promulgating Section 1091.

The reasoning in *Nerland* applies similarly here. The word "other" in "10 or more other employees" refers to the official whose interest is at issue. Because the statute treats an agent/consultant as creating a financial interest under section 1090, a consistent interpretation requires that other agents/consultants who perform the organization's work be included when measuring scale under the same provision. The statutory history—adding "or agent" to the eligibility clauses without a corresponding change to the threshold—reflects the limited scope of the 1963 amendment rather than a deliberate decision to exclude agents from the "10 or more" total.

Here, the Company operates with 54 individuals. Excluding President Banning, more than 10 other individuals perform the Company's work, consisting of consultants that include

LLC members, partners, Executive Leadership Development consultants, and support specialists. This satisfies the “10 or more other employees” requirement.

Accordingly, based on the facts provided, the remote interest exception under Section 1091(b)(2) for “an employee or agent of the contracting party” applies and Section 1090 does not prohibit the District from entering into a future contract with the Company. However, President Banning may not take part in these decisions, and his interest must be noted to the District Board and included in its official records.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M . F eser Jr .

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

JF:aja