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

June 1, 2026

Joshua Nelson
Best, Best & Krieger LLP
500 Capitol Mall, Suite 2500
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-26-045

Dear Mr. Nelson:

This letter responds to your request for advice on behalf of the North Tahoe Public Utility District ("District") and Board of Directors ("Board") member Phil Thompson 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 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).)

QUESTION

Does either the Act or Section 1090 prohibit Director Thompson from taking part in, or the District from entering into, a contract with Castillo Snow Plowing to provide snow removal

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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.

services to the District, given that Director Thompson receives annual payments from Castillo Snow Plowing for the sale of snow removal equipment?

CONCLUSION

Yes, Section 1090 prohibits Director Thompson from taking part in a contract with Castillo Snow Plowing to provide snow removal services to the District. In addition, because there are alternative sources that are available to provide those services to the District, the rule of necessity does not apply to allow the District to enter into that contract with Castillo Snow Plowing, as explained below.

FACTS AS PRESENTED BY REQUESTER

Director Thompson serves on the Board for the District. Director Thompson previously owned and operated a snow removal business. On his retirement, Director Thompson transferred equipment used in his snow removal business, including trucks, snowplows, and related snow removal equipment ("Equipment") to Castillo Snow Plowing, a snow removal company operated as a sole proprietorship by Maria Castillo. The transfer was structured as a lease-to-own agreement (the "Agreement"). The Agreement requires payments for a period of years with the final payment to be made in a number of years. Upon final payment, title to the Equipment will transfer to Castillo Snow Plowing. Director Thompson has no control of Castillo Snow Plowing, his only financial interest in Castillo Snow Plowing is the annual payment pursuant to the Agreement, which is more than $500. Additionally, Director Thompson is business partners with Maria Castillo in an unrelated contractor venture.

The District currently contracts for snow removal services. This contract will expire shortly. The District will be issuing a public invitation for bids and anticipates entering into a contract with the lowest responsive proposer, in accordance with applicable laws and regulations on public contracting. The District is not the only entity responsible for providing snow removal services within the District's boundaries as the County generally provides road maintenance services. The District only provides snow removal services to properties it owns or manages.

ANALYSIS

Section 1090 generally prohibits public officials, 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 in furthering the best interests of" their respective agencies. (*Stigall v. 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.)

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. (*Id*. at 649.) 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. (*Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 211-212; 89 Ops.Cal.Atty.Gen. 49 (2006).)

As a member of the District Board, Director Thompson is subject to the provisions of Section 1090. Additionally, due to his status as a District Board member, Director Thompson is presumed to be involved in the making of all contracts by the District irrespective of whether he actually participates in the making of the contract. (*Thomson*, supra, 38 Cal.3d at pp. 645, 649.) The determinative question is whether Director Thompson has a financial interest under Section 1090 in a contract between the District and Castillo Snow Plowing arising from the annual payments he receives from Castillo Snow Plowing, which would prohibit the District from making the contract.

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. (*Thomson v. Call*, supra, at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Furthermore, case law and statutory exceptions to Section 1090 make clear that the term "financially interested" must be liberally interpreted. It cannot be interpreted in a restricted and technical manner. (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1298.)

You state Director Thompson has transferred the Equipment from his former snow removal business to Castillo Snow Plowing under a lease-to-own Agreement. The Agreement requires for Castillo Snow Plowing to pay Director Thompson at least $500 annually. As such, Director Thompson has a financial interest in Castillo Snow Plowing and Section 1090 prohibits him from taking part in, and the District from entering into, contracts with Castillo Snow Plowing unless an exception applies.

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. Upon review, we advise that none of the exceptions apply to these facts.

In limited circumstances, the rule of necessity has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (*Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal.App.3d 311, 322; 78 Ops.Cal.Atty.Gen. 362, 372-373 (1995) [city council may contract with sheriff to provide law enforcement services to city while sheriff's deputy chief is council member].) The California Supreme Court has stated, "[t]he rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so (citations omitted), but it requires all conflicted members to refrain from any participation." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1097.)

Under this rule, a contract can be executed even though it would otherwise violate the terms of Section 1090. The rule of necessity has been applied in at least two specific types of situations: 1) in procurement situations for essential supplies or services when no source other than the one that triggers the conflict is available; and 2) in non-procurement situations to carry out essential duties of the office when the official or board is the only one authorized to act. (69 Ops.Cal.Atty.Gen. 102, 109 (1986).)

It is important to note again that the rule of necessity has only been applied in very limited situations. For instance, a community services district could obtain snow removal services from a business who employs a board member of the district, where the district is the only entity responsible for providing snow removal for the roads within its boundaries, and the board member's employer is the only snow removal business in the area. (*Lew* Advice Letter, A-19-178.) Similarly, a city could obtain emergency nighttime services from a service station owned by a member of the city council, where the town was isolated, and the council member's station was the only one in the area that was open. (4 Ops. Cal.Atty.Gen. 264 (1944).) Also, a community college board was allowed to negotiate with its faculty for salary and benefits even though a board member was a retired faculty member whose health benefits were tied to current faculty benefits because the board must perform essential and necessary functions and the board was the only entity empowered to contract on behalf of the community college district. (89 Ops.Cal.Atty.Gen. 217 (2006).)

As stated, the "rule of necessity" applies when there is no alternative source for essential services and when necessary to carry out essential duties when the board is the only one authorized to act. Here, unlike the situations discussed above, Castillo Snow Plowing is not the only source for snow removal services in the area as you state the District will be issuing a public invitation for bids and anticipates entering into a contract with the lowest responsive proposer. Accordingly, we find that the rule of necessity does not apply here.

We therefore conclude that Section 1090 prohibits the District from contracting with Castillo Snow Plowing, a business in which Director Thompson has a financial interest, even if he disqualifies himself from any participation in the contract decisions.[2]

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

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[2] Based on this conclusion, we do not provide any analysis under the Act.