



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

November 22, 2022

Daryl F. Camp, Ed.D.
Superintendent
San Lorenzo Unified School District
15510 Usher Street
San Lorenzo, CA 94580

Re: Your Request for Advice
Our File No. A-22-114

Dear Mr. Camp:

This letter responds to your request for advice on behalf of the San Lorenzo School District board of trustee member Kyla Sinegal 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 Alameda 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 San Lorenzo Unified School District (“District”) board of trustees’ member, Kyla Sinegal, have a financial interest under the Act or Section 1090 in the District’s current Memorandum of Understanding (“MOU”) with the Boys and Girls Club, a 501(c)(3) corporation, due to her employment with this organization that would affect her ability to participate in future decisions regarding the MOU?

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 Section 1091(b)(1), Trustee Sinegal has a remote financial interest in her nonprofit employer, which prohibits her from participating in future MOU decisions. However, the District's board of trustees may still make decisions regarding the MOU so long as Trustee Sinegal's interest is disclosed and noted in the board's records, and she properly recuses herself from the proceeding.

FACTS AS PRESENTED BY REQUESTER

Kyla Sinegal is a member of the San Lorenzo Unified School District ("District") board of trustees. She was recently hired by the Boys and Girls Club to work in human resources. She confirmed by email that her employer, the Boys and Girls Club, is a 501(c)(3) nonprofit organization.

The District currently has a board-approved MOU with the Boys and Girls Club that permits the Boys and Girls Club to provide services at the District's schools as extended learning opportunities. The MOU with the Boys and Girls Club was approved by the board prior to Trustee Sinegal obtaining the human resources position with the Boys and Club.

ANALYSIS

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 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.) 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) 103Cal.App.3d 191, 197.)

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 decision to modify, extend, or renegotiate a contract constitutes involvement in the making of a contract under Section 1090. (See, e.g., *City of Imperial Beach v. Bailey, supra*.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Finally, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

Section 1091, however, enumerates limited circumstances in which a public official's economic interest is considered "remote," such that the governmental body or board may still enter into the contract at issue, as long as the disqualified official's interest is disclosed to the body or board and noted in its official records, and the disqualified official does not take part in the contracting process. (Section 1091(a).) Applicable to these facts, an official is deemed to have a "remote interest" where the official is an employee of a Section 501(c)(3) nonprofit entity. Section 1091(b)(1) states:

(b) As used in this article, “remote interest” means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

This remote exception is applicable to Trustee Sinegal and she has only a remote financial interest in the Boys and Girls Club. While she may not participate in a decision on the MOU between the District and the Boys and Girls Club, the board’s actions regarding decisions on the MOU would not violate Section 1090 as long as Trustee Sinegal discloses her interest to the District board of trustees, has her interest noted in the board’s official records, and recuses herself from decisions involving the MOU.

Because Section 1090 already prohibits Trustee Sinegal from taking part in decisions regarding this MOU, no further analysis under the Act is necessary provided Trustee Sinegal properly recuses herself from the decisions.²

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: ~~L. Karen Harrison~~
L. Karen Harrison
Senior Counsel, Legal Division

LKH:aja

² While we note that we do not analyze the conflict of interest under the Act, Commissioner Trustee Sinegal must leave the room during the consideration of any decisions regarding the MOU under the Act’s recusal requirements. (Section 87105; Regulation 18707.)