



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 5, 2022

Larissa Seto  
Assistant City Attorney  
City of Pleasanton  
P. O. Box 520  
Pleasanton, CA 94566-0802

Re: Your Request for Advice  
**Our File No. A-22-119**

Dear Ms. Seto:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.<sup>1</sup> 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 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

Under the Act and Section 1090, may Commissioner Renton participate in the City of Pleasanton Housing Commission’s (Housing Commission) recommendations to Pleasanton City Council regarding the award of grants under the City’s Housing and Human Services Grant Program (HHSG Program) given that he is an unpaid member of the Board of Directors of Resources Education Activities Community and Housing for Special Adults of the Tri-Valley (Tri-Valley REACH), a nonprofit that has applied for an HHSG Program grant?

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<sup>1</sup> 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

Commissioner Renton does not have a disqualifying interest in Tri-Valley REACH as an uncompensated officer of the nonprofit, tax-exempt organization under either the Act or Section 1090. Accordingly, the Housing Commission may consider and award grant funding to the organization and Commissioner Renton is not precluded from taking part in the decision so long as the fact that he is currently serving as a member of the board of directors for the organization is noted in the official record.

## FACTS AS PRESENTED BY REQUESTER

You are a city attorney for Pleasanton and are seeking advice on behalf of City of Pleasanton Housing Commissioner Jamie Renton. Commissioner Renton also serves as a member of the board of directors of Tri-Valley REACH.

The City has created the HHSG Program that provides grants to nonprofit agencies that provide housing and human services to primarily low income residents. The HHSG Program is competitive in nature as funds are limited and more funds to one organization could mean less funds for another. Grant applications are reviewed by the City's Human Services Commission and the Housing Commission, which makes recommendations to the City Council as to how the funds should be allocated among the applicants. The City Council makes the final decision on how the funds are allocated.

Tri-Valley REACH is a tax-exempt 501(c)(3) nonprofit corporation. The purposes of Tri-Valley REACH are "to raise the quality of life for developmentally disabled residents of Livermore, Pleasanton, Dublin, Sunol, San Ramon, and the surrounding area; to foster and promote community-wide interest and concern for the problems of said residents; to relieve the burdens of the government by enabling these residents to live outside public institutions, and to enable these residents to enjoy a pattern of everyday life available to non-disabled people of the same age." Commissioner Renton receives no compensation from the corporation for serving on the board.

## ANALYSIS

### *The Act*

As a public official, Commissioner Renton is subject to the Act's conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use his official position to influence a governmental decision in which he has a financial interest. A public official has a "financial interest" in a governmental decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in a source of gifts to the official if the gifts aggregate to \$520<sup>2</sup> or more within 12 months prior to the decision. (Section 87103(e).)
- An interest in the official's personal finances, including those of the official's immediate family, also known as the "personal financial effects" rule. (Section 87103.)

A nonprofit organization such as Tri-Valley REACH is not considered a "business entity" for purposes of the Act. (Section 82005.) Further, as an uncompensated board member, Commissioner Renton does not have an interest in the organization as a source of income.

Assuming he has no other interests implicated by the decision, Commissioner Renton does not appear to have a potentially disqualifying interest in a decision regarding the lease under the conflict of interest provisions of the Act.

### *Section 1090*

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. (*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).

In this case, there is no question that Commissioner Renton is a public officer subject to the provisions of Section 1090, that the Commission's potential grant award to Tri-Valley REACH would constitute a public contract for purposes of Section 1090, or that Commissioner Renton is participating in making a contract should he take part in a grant recommendation to the City Council. The determinative question is whether Commissioner Renton has a disqualifying financial interest in the contract under Section 1090, since REACH is a nonprofit and the Commissioner is an unpaid volunteer.

Sections 1091 and 1091.5 set forth various statutory categories of "remote interests" and "noninterests" under Section 1090. If an official has only a "remote interest," the contract may be made if (1) the official in question discloses his or her financial interest in the contract, (2) the interest is noted in the public entity's official records, and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a); 88 Ops.Cal.Atty.Gen. 106, 108 (2005); 83 Ops.Cal.Atty.Gen. 246, 248 (2000).) If a "noninterest" is present, the official in question may participate in the contract and disclosure is not generally necessary. (*City of Vernon v. Central*

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<sup>2</sup> Note that the adjusted annual gift limit amount in effect for the period January 1, 2023, to December 31, 2024, is \$590.

*Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515; 84 Ops.Cal.Atty.Gen. 158, 159-160 (2001).)

In pertinent part, Section 1091.5(a) includes under “noninterests”:

(8) That of a *noncompensated* officer of a nonprofit, 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.

For purposes of this paragraph, an officer is “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

You have indicated that REACH is a tax-exempt organization and Commissioner Renton is uncompensated. As such, the question is whether one of REACH’s primary functions is to support the Housing Commission

One of the major purposes of Tri-Valley REACH is to raise the quality of life of disabled residents in many cities, including Pleasanton. Additionally, Tri-Valley REACH aims to alleviate stress on local governments by providing space for residents to live outside of public institutions. The Housing Commission focuses on affordable housing for Pleasanton residents. Because Tri-Valley REACH provides housing for disabled residents of Pleasanton, thereby alleviating some of the public housing needs of the city, Tri-Valley REACH does support the function of the Housing Commission, as well as the City. Thus, Commissioner Renton has a “non-interest” in Tri-Valley REACH and is not prohibited from taking part in the Housing Commission’s decision regarding the grants and recommendations to the City Council so long as his role as a board member is noted in the official record.

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

Sincerely,

Dave Bainbridge  
General Counsel

  
By: Valerie Nuding  
Counsel, Legal Division

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