



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 29, 2022

Jena Shaof Acos
Brownstein Hyatt Farber Schrek, LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, California 93101

Re: Your Request for Advice
Our File No. A-22-133

Dear Ms. Acos:

This letter responds 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

Under the Act and Section 1090, may Goleta West Sanitary District Director Robert Thomas take part in governmental decisions, including contract processes, between the District and a neighboring sanitary district, given that the neighboring district employs Director Thomas's adult, financially independent son?

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

While other laws may apply, neither the Act nor Section 1090 are implicated by a government contract's potential effect on a public official's adult, financially independent child. Accordingly, Director Thomas is not prohibited from taking part in the decisions under the Act or Section 1090 based on his familial relationship with his son.

FACTS AS PRESENTED BY REQUESTER

Robert Thomas (“Director Thomas”) is a newly installed board member on the Goleta West Sanitary District’s (“District”) five-member Board of Directors. Director Thomas’s son, Bronson Thomas (“Bronson”), is a Treatment Plant Operator II at the neighboring Goleta Sanitary District (“GSD”). GSD operates the regional wastewater treatment plant (“Plant”), which treats wastewater from several local agencies. The District, along with these other local agencies, pay GSD monthly for treating their respective sewage. As is described in more detail below, these payments also cover a portion of GSD’s capital improvement costs for the Plant and salaries of GSD employees who operate the Plant.

The District operates and maintains a wastewater collection system and street sweeping program that services the western Goleta valley. The District is not to be confused with GSD, which provides sanitation services to the eastern Goleta valley and operates the regional Plant to which the District’s wastewater is sent for processing. Several other public agencies also send their wastewater to GSD’s Plant for processing. Per various agreements, each agency has a percentage of “capacity rights” in the Plant, as follows:

- GSD 47.87%
- District 40.78%
- University of California Santa Barbara 7.09%
- City of Santa Barbara 2.84%
- County of Santa Barbara 1.42%

Every month, each agency must pay GSD its pro rata share of capital improvement and maintenance costs for the Plant. For example, if GSD spends \$100 on capital upgrades for the Plant, the District pays 40.78% of those costs. GSD also separately bills the District for the actual percentage of total sewage treatment and disposal flows through the Plant, plus a 6% administrative charge added to this cost (“Flow Costs”). A portion of the moneys paid by the District for Flow Costs go toward GSD personnel salaries; however, it’s unclear to whom and what amounts go to individual GSD employees.

After GSD, the District is the second largest payor of Capital Improvement and Maintenance Costs for the Plant. These monthly costs to the District are significant. For example, in April and August of this year and September 2021, respectively, GSD billed the District \$286,446, \$195,627, and \$291,930 (includes Capital Improvement and Maintenance Costs plus Flow Costs).

In some instances, GSD undertakes improvements to the Plant as a matter of course and does not obtain an approval of the same from the District. Such costs are indicated on the monthly bills GSD sends the District, and the District’s Board does not see or approve the billing. On occasion, however, the District’s board must vote to participate in and pay for particularly large

capital improvements at the Plant. Per GSD's Project Notification Policy, a "Significant Project"—which is defined as a project that has an estimated total cost of more than \$1,000,000 and is identified in GSD's 10-year Capital Improvement Plan—must be agreed to by the District. Upon agreement, the District would be required to fund 40.78% of the cost of the Significant Project. For example, for even the lowest value Significant Project, at \$1,000,001, the District would be expected to pay \$407,800.

In addition, the District must approve certain "Routine Projects," as that term is defined in GSD's Notification Policy; namely, projects that cause GSD to exceed its adopted capital budget for the then current fiscal year by more than 5% and the project in question is of a kind that would require notification to the District under the District and GSD's 1960 Agreement. Under the 1960 Agreement, all Plant projects require the District's approval except emergency projects, projects under one thousand dollars (\$1,000), improvements that solely benefit GSD, and improvements necessary to meet state or federal requirements.

Director Thomas's son, Bronson, is a full-time Grade III Wastewater Treatment Plant Operator at GSD, and has been with GSD since May 2021. Bronson's role is supervisory, but not managerial. Director Thomas is employed by Santa Barbara Junior High School as a special education teacher. He and his son live separately and are financially independent from one another (e.g., Director Thomas does not claim Bronson as a dependent on his tax returns, father and son do not conduct a side business together, and neither owes the other money for a loan or mortgage). Director Thomas lives in Goleta and Bronson in Buellton; neither has an interest in the other's residence. Director Thomas plans to purchase a vehicle from Bronson and pays for some extracurricular activities for Bronson's children (i.e., Director Thomas's grandchildren).

ANALYSIS

The Act

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he 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 his or her immediate family," or on certain specified economic interests. (Section 87103.) Under Section 82029, "immediate family" is defined as "the spouse and dependent children." "Dependent children," in turn, is defined as "a child . . . of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return." (Regulation 18229.1.)

Because Bronson is over 18 and not a dependent, he is not considered Director Thomas's "immediate family" for purposes of the Act. Accordingly, Bronson's employment with GSD does not implicate the Act's conflict of interest provisions for Director Thomas. Therefore, Director Thomas is not prohibited from taking part in governmental decisions concerning GSD, including contracting decisions between the District and GSD.

Director Thomas should note that although Bronson does not qualify as “immediate family” under the Act, he may constitute a different type of economic interest in the future. For instance, a public official such as Director Thomas has an economic interest in “[a]ny source of income . . . 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.” If, for example, Director Thomas rented real property to Bronson, Bronson would qualify as a source of income.

You noted that Director Thomas pays for some of his grandchildren’s extracurricular activities. This does not establish an economic interest in Bronson. Director Thomas also plans to purchase a vehicle from Bronson. Often, vehicles sold to family members are sold at below market value. In such instances, the discounted value would typically be considered a “gift” under the Act. (See section 82028(a).) However, the Act’s definition of “gift” also excludes gifts from an individual’s child. (Section 82028(b)(3).) Accordingly, Bronson’s sale of a vehicle to Director Thomas, even at a discount, does not implicate the Act’s conflict of interest provisions for purposes of Director Thomas.²

Section 1090

Section 1090 provides, “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees 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 members.” (Section 1090(a).) 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. 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) 103 Cal.App.3d 191, 197.)

Under Section 1091(b)(4), an official has only a remote interest in the earnings of the official’s minor children. Furthermore, the official must have a specific financial interest in the contracts of his or her adult children to have a conflict under Section 1090, as the Attorney General has opined, “there is no similar determination that a parent has either a direct or indirect financial interest in the property or earnings of an adult child.” (92 Ops.Cal.Atty.Gen. 19 (2009).) The Attorney General has stated that such a relationship does not invalidate a contract under Section 1090. (*Ibid.*) Accordingly, as under the Act, Section 1090 also does not prohibit Director Thomas from taking part in any contracting process between the District and GSD.

² We note, that should Director Thomas purchase a vehicle from his son Bronson, Bronson may have an interest in Director Thomas as a source of income. We express no opinion regarding the application of the Act’s disqualification rules as applied to Bronson.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Counsel, Legal Division

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