



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

January 20, 2023

Meredith Matthews
Council Member
Arcata City Council
1700 Benjamin Ct
Arcata, CA 95521

Re: Your Request for Advice
Our File No. A-23-002

Dear Ms. Matthews:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under 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 Humboldt 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 the Act or Section 1090 prohibit the City of Arcata from entering future contracts, including its annual contract, with the Arcata Chamber of Commerce if you become the Executive Director of the Chamber?

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

No. Section 1090 prohibits you from making or participating in the making of the potential contracts with the Chamber; however, the City may enter into those contracts, including its annual contract, pursuant to the remote interest exception set forth in Section 1091(b)(1), as outlined below. Additionally, to the extent the decision is before the City Council, you must leave the room during the consideration of any such contracts pursuant to the Act's recusal requirements.

FACTS AS PRESENTED BY REQUESTER

You were appointed to be a member of the Arcata City Council in 2021 and currently hold the position of Vice-Mayor. You seek this advice because you are interested in applying to be the Executive Director of the Arcata Chamber of Commerce, a California non-profit 501(c)(6) organization. The Executive Director of the Chamber is a compensated position.

The City has a City Manager form of government, and the City Council appoints a City Manager to act as chief executive officer of the City. The City Manager performs several functions including City Clerk and Purchasing Agent.²

The City has had an annual contract with the Chamber of Commerce for over 25 years. The contract amount for the 2022/2023 fiscal year is \$28,470. The contract involves the provision of specific business support tasks by the Chamber³ and has no relation to the Chamber's vacant Executive Director position.⁴

The current contract was executed on the City's behalf by the City Manager. The City's purchasing policy delegates authority to the City Manager for purchases or professional service contracts under \$60,000. Therefore, this contract does not require annual City Council approval.

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.) 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

² See <https://cityofarcata.org/228/City-Manager>

³ For example, the Chamber is required to keep the City apprised of needs and perceptions of the business community through surveys and other means; provide business networking and professional development opportunities; and conduct community and business outreach.

⁴ You also stated that you have had no involvement in the preparation of the employment agreement that Chamber will use for the Executive Director position.

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 pp. 647-649.)

However, the Legislature has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a remote interest is present, the contract may be made by the agency provided: (1) the officer discloses his or her financial interest in the contract to the public body; (2) the interest is noted in the body's official records, and; (3) the officer abstains from participating in the making of the contract. (84 Ops.Cal.Atty.Gen 158, 159 (2001).)

Officer or Employee of a Nonprofit Corporation.

Section 1091(b)(1) sets forth a remote interest exception and provides in pertinent part as follows:

"(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."

You would like to apply to become the Executive Director of Arcata Chamber of Commerce, which is a nonprofit corporation. Therefore, we find that you would have a remote interest under Section 1091(b)(1) in the annual contract between the City and the Chamber. Moreover, while we cannot make a specific determination regarding future unidentified contracts, the remote interest exception under Section 1091(b)(1) generally applies so long as the only interest involved in the contract is an official's interest in a nonprofit organization, including a 501(c)(6).

Because we conclude that you would have a "remote interest" in the annual contract between the City and the Chamber that generally applies so long as the only interest involved in the contract is an official's interest in a nonprofit organization, we do not analyze this issue further under Section 1090. Additionally, because the remedy in this situation is for you to abstain from any participation in the making of such contracts (see Section 1091(a)), we do not analyze the conflict of interest under the Act as the remedy for conflicts under the Act would not differ from the action already required, except to note that you must leave the room during the consideration of any such contracts pursuant to the Act's recusal requirements.⁵

⁵ Your facts state the City Manager will enter the annual contract with the Chamber pursuant to the City's purchasing policy delegating authority to the City Manager for professional service contracts under \$60,000 without City Council approval. In those situations, you must not have any role or do anything to influence the City Manager.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja