



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 2, 2023

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-23-032

Dear Ms. Seto:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) or 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 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

Do the conflict of interest provisions of either the Act or Section 1090 prohibit Commissioner Coleman-Knight from taking part in recommendations by the Civic Arts Commission to the Pleasanton City Council regarding the award of grants under the Grant Program given that she is a Board member of the nonprofit Pleasanton Cultural Arts Council, which has submitted an application for such a grant?

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. Neither the Act nor Section 1090 prohibit Commissioner Coleman-Knight from taking part in recommendations concerning grants under the Grant Program for which the Pleasanton Cultural Arts Council has submitted an application.

FACTS AS PRESENTED BY REQUESTER

You seek this advice on behalf of City of Pleasanton Civic Arts Commissioner Jan Coleman-Knight. Commissioner Coleman-Knight is a member of the Board of Directors of the Pleasanton Cultural Arts Council (“PCAC”), which has applied for a grant from the City in connection with the City’s Community Grant Program – Youth/Civic Arts (“Grant Program”).

PCAC is a California nonprofit public benefit corporation exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)). According to its stated mission, PCAC “encourages, supports and promotes the arts in our Pleasanton schools and local community to reflect our cultural diversity and to inspire all.”

Commissioner Coleman-Knight serves on the Board of Directors of PCAC. Commissioner Coleman-Knight receives no compensation from PCAC.

The City’s Community Grant Program provides grant funds to non-profit organizations serving Pleasanton residents in the area of arts, culture and youth programs. The goal of the Grant Program is to enhance the quality of life in Pleasanton. The City’s Community Grant Program distributes funding from the City’s General Fund. The City’s Grant Program is competitive in nature. Grant funds are limited and less funding for one applicant could mean more funds available for another applicant.

The City typically receives 15 or more applications for funding from a wide range of organizations. Grant applications are reviewed by the City’s Civic Arts Commission, which makes recommendations to the City Council as to how the grant funds should be allocated among the applicants. The City Council then makes the final decision as to how such funds are allocated.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Pertinent to your facts, the Act’s conflict of interest provisions apply to financial interests based on the following:

- An interest in a business entity² 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 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).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

According to the facts, Commissioner Coleman-Knight receives no compensation for her services as a Board member for PCAC. Therefore, she does not have an interest in PCAC as a source of income. Additionally, she does not have a business interest in PCAC because, as a nonprofit organization, PCAC is not a "business entity" as defined by the Act. (Section 82005.) Finally, there are no facts suggesting decisions related to PCAC will have any financial effect on her personal finances. Therefore, based on the facts provided, Commissioner Coleman-Knight does not have a disqualifying conflict of interest under the Act in the Civic Arts Commission's recommendations concerning grants under the Grant Program for which PCAC has submitted an application.

Section 1090

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 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).)

PCAC has applied for a grant³ from the City in connection with the City's Community Grant Program and the Civic Arts Commission will make recommendations to the City Council as

² Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

³ Note that grant agreements are generally considered contracts for purposes of Section 1090. (See, e.g., *Honig, supra*, 48 Cal.App.4th at p. 350; 89 Ops.Cal.Atty.Gen. 258, 260-262 (2006).)

to how the grant funds should be allocated among the applicants. You therefore ask whether Section 1090 would prohibit Commissioner Coleman-Knight from taking part in the recommendations based on her affiliation with the Civic Arts Commission as a member of its Board. Importantly, 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 noninterest is present, the public official's abstention is generally not required, and the contract may be made by the agency.

Pertinent to the present situation, Section 1091.5(a)(8) establishes that an officer is not interested in a contract if his or her interest is:

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.

Commissioner Coleman-Knight is a noncompensated member of PCAC's Board of Directors. PCAC is a nonprofit 501(c)(3) organization with a primary purpose of promoting the arts in Pleasanton's schools and local community. This supports important functions of the City's Civic Arts Commission as well as the City Council. Based on these facts, Commissioner Coleman-Knight would have a noninterest in recommendations by the Civic Arts Commission to the City Council as to how the subject grant funds should be allocated among the applicants, including PCAC. However, in order to participate in these decisions, she must disclose her interest in the official records of the Civic Arts Commission.

Accordingly, for purposes of the Act, Commissioner Coleman-Knight does not have a disqualifying conflict of interest in the Civic Arts Commission recommendations to the City Council concerning allocation of the subject grant funds and, for purposes of Section 1090, she has a noninterest in any City contracts involving PCAC.

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

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