



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 7, 2023

Kevin G. Ennis
City of Pasadena
350 South Grand Avenue
37th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-23-051

Dear: Mr. Ennis:

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 Los Angeles 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 either Section 1090 or the Act prohibit City of Pasadena Councilmember Jason Lyon from participating in, or the City from entering into, an amended Master Lease Agreement between

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.

the City and the Pasadena Tournament of Roses Association (the “Association”) given he is employed by the law firm that will represent the Association in this matter?

CONCLUSION

Section 1090 generally prohibits Councilmember Lyon from taking part in the proposed amendment to the Master Lease Agreement between the City and the Association based on his employment with the law firm representing the Association; however, because he has only a remote interest in the agreement under Section 1091(b)(8), the City may enter into the agreement with the Association. Additionally, we note that he must leave the room during the consideration of any such amendment to the agreement pursuant to the Act's recusal requirements.

FACTS AS PRESENTED BY REQUESTER

You are Special Counsel for the City of Pasadena seeking advice on behalf of Councilmember Jason Lyon and the City Attorney’s Office. Councilmember Lyon was elected to the Pasadena City Council in June of 2022, and he assumed office on December 12, 2022.

In his private capacity, Councilmember Lyon is a partner with the Pasadena-based law firm of Hahn & Hahn, LLP (“Hahn & Hahn”). He has been with Hahn & Hahn for six years since 2017. Through his separate, wholly-owned professional corporation, Councilmember Lyon is a part owner of Hahn & Hahn. At the present time, his ownership interest in that law firm is less than ten percent (10%). Through his professional corporation, Councilmember Lyon obtained income from Hahn & Hahn aggregating \$500 or more in the last 12 months.

Councilmember Lyon’s colleagues in the business department at Hahn & Hahn have negotiated agreements such as ground leases and easements with the City on behalf of the firm’s clients. One of Hahn & Hahn’s long-term clients is the Association. The Association has been a client of Hahn and Hahn since at least 1977 and has an existing and long-standing Master Lease Agreement with the City involving various properties. Over the years, Hahn & Hahn has provided professional services to the Association related to the Master Lease Agreement. The Association is currently negotiating a proposed revision to one aspect of the Master Lease Agreement (“lease amendment”) involving the City, as lessor, and the Association, as lessee, regarding the Association’s periodic use of the City-owned Rosemont Pavilion, a multi-use warehouse building located in the Arroyo Seco Park area of the City. Hahn & Hahn is expecting to be asked to review, draft, and negotiate certain aspects of the lease amendment. Hahn & Hahn would be paid for its services to the Association based on an agreed hourly rate for each hour of work performed in connection with the review, drafting, and negotiation of the lease amendment.

Councilmember Lyon has not done any work for the Association and would not be involved in any aspect of the review, revision, or negotiation of the proposed lease amendment in connection with his work at Hahn & Hahn. Hahn & Hahn will not compensate Councilmember Lyon to achieve a particular result in a City decision either on behalf of the firm or the Association, and Councilmember Lyon will not receive any “incentive compensation” from the firm that ties his salary or a bonus by a predetermined formula to the revenues of the firm derived from the Association.

If Hahn & Hahn provides legal services to the Association in connection with the review, revision, or negotiation of the lease amendment, the fee revenues derived from that work are anticipated to be far below \$1 million, far below 5% of the firm's gross annual revenues, and almost certainly will not reach even 1% of the firm's annual gross revenues.

ANALYSIS

Section 1090

Under Section 1090, public officials “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 a member.” 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.) Further, an official “makes” a contract if the official participates in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, planning, drawing of plans and specifications. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, 58 Cal.2d at p. 569.)²

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a “remote interest,” as defined in Section 1091, or a “noninterest,” as defined in Section 1091.5. As amended in 1996, Section 1091(b)(6) establishes a remote interest exception where the interest is that of an attorney representing the contracting party “if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm” Similarly, Section 1091.5(a)(10) establishes as a non-interest: “[t]hat of an attorney of the contracting party . . . if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm”³

The Attorney General has opined that Sections 1091(b)(6) and 1091.5(a)(10) do not apply where the attorney representation involves the contract at issue, explaining, “[w]e believe that the phrase ‘an attorney of the contracting party’ pertains to the representation of the client in other, unrelated matters, not in the contract with the city. This conclusion follows the interpretive rule of

² Note that 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* (1980) 103 Cal.App.3d 191.)

³ While your request asks specifically about the application of the noninterest exception under Section 1091.5(a)(10) to the present facts, we also provide analysis for the similar remote interest exception under 1091(b)(6)

narrowly construing exceptions to section 1090 to avoid undermining its purpose that public officials discharge their fiduciary duties with undivided allegiance.” (101 Cal.Ops.Atty.Gen. 1, 7 fn.76 (2018).) Accordingly, the Attorney General concluded, “[w]e find that where a council member advocates for a client in a contract with the city, the attorney general exceptions do not apply to lift the section-1090 prohibition.” (*Id.* at p. 20.) Based on the Attorney General’s analysis that Sections 1091(b)(6) and 1091.5(a)(10) pertain to the representation of clients in matters *unrelated* to the contract with the government entity, it appears those two statutory exceptions are not applicable to the present situation. (See, e.g., *Guina* Advice Letter, No. A-22-076.)

However, another exception requiring examination is the remote interest exception under Section 1091(b)(8), which relates to the duration of a business relationship. Section 1091(b)(8) states that an official will have a remote interest in the contract, where the official’s interest is “(t)hat of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.” Thus, an official has a financial interest in a contract entered into by a government entity if the official provides services to the party contracting with that government entity, but only a remote interest if those services have been provided for at least five years prior to the official’s election or appointment to the relevant government entity.

Councilmember Lyon was elected to the Pasadena City Council in June of 2022 and assumed office on December 12, 2022. Since 2017, he has been with Hahn & Hahn, which has been providing legal representation to the Association since at least 1977. This is a period of at least five years prior to his election to the City Council as required for the application of the remote interest exception under Section 1091(b)(8).

Accordingly, Councilmember Lyon has a remote interest in any lease amendment between the City and the Association under Section 1091(b)(8). When a remote interest is present, a board may execute a contract as long as: (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity’s official records, and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a); 83 Ops.Cal.Atty.Gen. 246, 248 (2000).) Therefore, the City Council may enter into a lease amendment with the Association so long as Councilmember Lyon discloses his financial interest in the agreement, that disclosure is noted in the official records, and he abstains from any participation in making the agreement.

The Political Reform Act

Because Councilmember Lyon must abstain from taking any part in decisions concerning proposed lease amendment, we do not need to further analyze the potential conflict of interest issue under the Act. By following the abstention requirements of Section 1090 and additionally leaving the room during the decisions, the Councilmember would satisfy the Act’s recusal provisions set forth in Section 87105 and Regulation 18707. As such, we do not analyze the Act’s conflict of interest provisions further.

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