



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 22, 2023

Jamie Azpeitia-Sachs
Inland Empire Dance Center
Riverside County
6056 Magnolia Ave
Riverside, CA 92506

Re: Your Request for Advice
Our File No. A-23-076

Dear Ms. Azpeitia- Sachs:

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 Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

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 Riverside 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 you, in your capacity as a Riverside County Board of Education (“Board”) member, from taking part in, or the Riverside County Office of Education (“RCOE”) from entering into, contracts with a charter school where your company has provided dance instruction to the school for more than seven years?

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

Yes. You have a financial interest in the above noted contracts under Section 1090 due to your ownership of a company that provides services involving dance instruction to the charter school. However, as explained below, the remote interest exception under Section 1091(b)(8) applies to allow the RCOE to enter such contracts so long as you do not take part in the decisions. Additionally, you must leave the room during the consideration of any such contracts pursuant to the Act's recusal requirements.²

FACTS AS PRESENTED BY REQUESTER

You were appointed on January 10, 2023, to be a member of the Riverside County Board of Education. You own a dance studio and have had a service vendor agreement with Springs Charter Schools for more than seven years. Currently, your company has a contract to provide dance instruction to four students at the school and it pays your company anywhere from \$250 to \$350 per month for these services.

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 public entity, the prohibition typically 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.)

As a member of the RCOE Board, you are a public officer subject to the provisions of Section 1090. Additionally, due to your status as a Board member, you are presumed to be involved in the making of all contracts by the RCOE irrespective of whether you actually participate in the making of the contract. (*Thomson, supra*, at pp. 645, 649.) Thus, the determinative question is whether you have a financial interest in contract decisions involving the RCOE and the charter school and, if so, whether your interest is a “remote interest” or a “noninterest” as defined in Sections 1091 and 1091.5.

Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956)

² In light of the conclusion reached herein, it is unnecessary to further consider the remote interest exception for contracts between governmental agencies under Section 1090(b)(13). Additionally, we note that the noninterest exception in 1091.5(a)(9) does not apply to a contract with the charter school that employs you as an instructor.

143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) The California Supreme Court in *Lexin v. Superior Court* (2010) 47 Cal.4th 1050 stated that the situation “where public officials on behalf of a public entity participate in making a contract with a second entity for which they work, the scenario poses at least the risk that the officials will be compromised by serving ‘two masters.’” (*Lexin, supra*, at p.1075, citing *Thomson, supra*, at p. 645 and fn. 14 [additional citations omitted].)

However, 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. If a remote interest is present, the contract may be made if: (1) the officer discloses the interest in the contract to their public agency; (2) that interest is noted in the agency’s official records; and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a).) If a noninterest is present, the contract may be made without the officer’s abstention, and a noninterest generally does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

Pertinent to this situation 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.”

In 2014, the Attorney General’s Office addressed whether Section 1091(b)(8) applies where the business relationship is between the official’s business and the official’s government agency as the “contracting party” and found that it did not. (97 Ops. Cal. Atty. Gen., 70, 74-75 (2014).) In that matter, the city councilmember and co-owner of a glass manufacturing and installation business had been doing business with the city for over five years but had a prohibitive financial interest in contracts between the city and her business once the owner became a city council member. The opinion states, “[i]n this provision, ‘contracting party’ refers not to the government agency, but to the party doing business with the government agency.” (*Ibid.*) The opinion states, “[b]ecause the council member here is a co-owner of the contracting party, rather than a mere supplier to the contracting party, the exception does not apply.” (*Ibid.*)

The present situation is different. The RCOE will be contracting with the charter school. In this situation, while the charter school is a governmental entity, it is the “contracting party,” and you, in your private capacity, are a supplier of services to the contracting party. The facts state your company has been providing dance instruction to the charter school for more than seven years. Therefore, because your company has been providing these services to the “contracting party” for more than five years prior to your appointment to the board, you will have a remote interest in any contracts between the RCOE and the charter school.

Because you will have a remote interest in any contract decisions between the RCOE and the charter school for which your company provides dance instruction, the RCOE may make such agreements; however, you must disclose your interest in any contract to the RCOE; the interest

must be noted in the School District's board records; and you must abstain from any participation in the making of the contract. (Section 1091(a).) Additionally, because the remedy in this situation is for you to abstain from any participation in the making of such contracts, 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.

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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