



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 9, 2025

Jeffrey S. Ballinger
Partner
Best & Best Krieger
655 West Broadway, Suite 1500
San Diego, California 92101

Re: Your Request for Advice
Our File No. A-25-096

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of City of Palm Springs (“City”) Mayor Ron deHarte regarding the conflict of interest provisions of 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 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 Mayor deHarte have a financial interest under the Act or Section 1090 in the proposed Flagpole Agreement with Greater Palm Springs Pride, a 501(c)(3) corporation, because of his management position at the nonprofit and his limited liability company’s independent contractor relationship with the nonprofit, that would prohibit him from participating in decisions regarding the agreement?

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. Under Section 1091(b)(1), Mayor deHarte has a remote financial interest in the proposed contract with Greater Palm Springs Pride as an officer and compensated independent contractor for the nonprofit. He may not participate in the proposed Flagpole Agreement. However, the City Council may still make decisions regarding the Flagpole Agreement so long as Mayor deHarte's interest is disclosed and noted in the City Council's records, and he properly recuses himself from the proceeding. We advise that he must also leave the room in order to comply with the Act's recusal requirements²

FACTS AS PRESENTED BY REQUESTER

Mayor deHarte is the Chief Executive Officer of the local LGBTQ Pride organization, Greater Palm Springs Pride, which is a California nonprofit public benefit corporation, exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Greater Palm Springs Pride is organized to promote the public education and public awareness of the personal rights and civil liberties of the lesbian/gay community and to engage in activities in support thereof. One of the more prominent activities of Greater Palm Springs Pride is the planning and execution of the annual Palm Springs Pride event. Greater Palm Springs Pride also organizes other events within the community, including the annual Harvey Milk Breakfast, the Big Gay BBQ, and the annual Pride Honors Awards.

Mayor deHarte is not compensated for his service as Chief Executive Officer of Greater Palm Springs Pride. Instead, he provides services to Greater Palm Springs Pride for the planning and execution of the above-referenced events through a limited liability company, deHarte Group, LLC, of which he is President and 100 percent owner. There are no other employees of deHarte Group, LLC. Greater Palm Springs Pride has no employees of its own. The remuneration that Mayor deHarte received in 2024 for his services form all of his regular income. In a follow-up email, you stated that Mayor deHarte would not be receiving any compensation for services through deHarte Group LLC in connection with the proposed Flagpole Agreement.

Greater Palm Springs Pride, acting through another of its Board of Directors, has proposed the installation of a Landmark Art Installation: Arenas District Pride Flagpole. The seventy-foot flagpole, similar to those found in the Castro District of San Francisco and the Hillcrest Neighborhood of San Diego, would be installed by the City on City-owned property near the "Arenas District" of Palm Springs, in which many LGBTQ bars, shops and restaurants are located. Greater Palm Springs Pride would agree, pursuant to a written agreement between the City and Greater Palm Springs Pride (the "Flagpole Agreement"), to:

- contribute up to \$50,000 toward the City's above-ground flagpole costs, to maintain the area around the Flagpole,
- install a plaque, manage the raising and lowering of the flags, and

² We do not analyze the conflict of interest under the Act as the remedy would not differ from the action already required, except to note that Mayor deHarte must leave the room during the consideration of the Flagpole Agreement pursuant to the Act's recusal requirements.

- manage the flying of flags, including the “1979” Gilbert Baker Pride flag as well as other flags such as the Transgender flag (Monica F Helms), the Leather Pride Flag (Anthony (Tony) F. DeBlase, the Bisexual Pride flag (Michael Page) and the United States flag.

The proposed agreement and its associated activities are not the subject of the agreement between Greater Palm Springs Pride and deHarte Group, LLC. Thus, deHarte Group, LLC would not receive any direct compensation under the agreement.

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.) 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.)

Generally, a “financial interest” is broadly defined for purposes of Section 1090 and includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. In determining whether a financial interest exists for purposes of Section 1090, courts “generally focus on whether the contract in question could confer some type of pecuniary advantage to the target of a Section 1090 inquiry.” (*Eden Township Healthcare District v. Sutter Health* (2011) 202 Cal.App.4th 208, 225.)

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 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*, *supra*.) 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).)

Section 1091, however, enumerates limited circumstances in which a public official's economic interest is considered “remote,” such that the governmental body or board may still enter into the contract at issue, as long as the disqualified official's interest is disclosed to the body or board and noted in its official records, and the disqualified official does not take part in the contracting process. (Section 1091(a).) Applicable to these facts, an official is deemed to have a “remote interest” where the official is an employee of a Section 501(c)(3) nonprofit entity. Section 1091(b)(1) states:

(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, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

Mayor deHarte is an officer of Greater Palm Springs Pride, a 501(c)(3) nonprofit organization, and receives compensation for services provided, albeit through his business entity, deHarte Group, LLC. In a similar situation, the Commission examined whether the remote interest exception under Section 1091(b)(1), which expressly applies to “an officer or employee of a nonprofit entity” would also apply to an independent contractor of a nonprofit entity. (*Nerland* Advice Letter, No. A-19-014.) In concluding that it would, the Commission stated:

While an independent contractor is distinguishable from a business’s regular employees, an independent contractor is still employed by the contractual employer under a broad definition of “employment.” Moreover, there is no reason to categorically exclude independent contractors from the remote interest exception in Section 1091(b)(1). In many cases, an independent contractor is performing essentially the same work that an employee might perform for a 501(c)(3) organization, and generally an independent contractor’s interest in his or her contractual employer is more attenuated than a regular employee’s interest. Accordingly, there is no public interest served in excluding an independent contractor from Section 1091(b)(1) and there is no reason to believe that the Legislature intended to do so in promulgating Section 1091.

(*Nerland* Advice Letter, *supra*.)

As such, this remote exception is applicable to Mayor deHarte, and he has a remote financial interest in contracts with Greater Palm Springs Pride as both an officer and compensated independent contractor for the nonprofit organization. He may not participate in a decision on the Flagpole Agreement between the City and Greater Palm Springs Pride. However, the City Council’s decision to enter into the agreement would not violate Section 1090 as long as Mayor deHarte discloses his interest to the District board of trustees, his interest is noted in the City Council’s official records, and he recuses himself from decisions involving the Flagpole Agreement.

Additionally, because the remedy in this situation is for him to abstain from any participation in the approval of the Flagpole Agreement (see Section 1091(a)), we do not analyze the conflict of interest under the Act as the remedy would not differ from the action already required, except to note that Mayor deHarte must leave the room during the consideration of the Flagpole Agreement pursuant to the Act’s recusal requirements. (Section 87105; Regulation 18707.)

If you have other questions on this matter, please contact me at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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