



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 31, 2024

Aleks. R. Giragosian  
General Counsel  
Montecito Sanitary District  
790 E. Colorado Boulevard, Suite 850  
Pasadena, CA 91101-2109

Re: Your Request for Advice  
**Our File No. A-24-116**

Dear Mr. Giragosian:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> 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 Santa Barbara 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

Under Section 1090, may Montecito Sanitary District (District) Director Diantha Glaser, and the District, consider a contract between the District and Stantec on a project to restore a creek bed where Director Glaser's employer, Rincon Consultants, is a subcontractor on the project?

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<sup>1</sup> 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

Under Sections 1090 and 1091, the District Director's financial interest in a prospective contract with her employer is considered "remote" and she is required to recuse herself from the decision, but the District may still contract with Stantec in which Rincon serves as a subcontractor.

## FACTS AS PRESENTED BY REQUESTER

The District is an independent special district located in Montecito, an unincorporated neighborhood of Santa Barbara County. Montecito has a population of less than 10,000 people, and Santa Barbara County has a population of less than 500,000 people.

In August 2024, Diantha Glaser was appointed to serve as a Director of the District. In September 2024, Director Glaser accepted an employment offer as a biologist at Rincon Consultants (Rincon), a large engineering firm. She is not in a primary management capacity with the engineering firm, is not an officer or director of the engineering firm and holds no ownership interest in the engineering firm. Rincon has over 400 employees across California, with an office in Santa Barbara County.

All District contracts for professional engineering services are competitively bid. The District contracted with Stantec to provide professional engineering support services. The contract was competitively bid, and Stantec was the lowest responsive and responsible bidder. Stantec, the prime contractor, subcontracts some work to other engineering firms, including Rincon, Director Glaser's employer. Director Glaser did not and will not participate in formulating Rincon's bids.

The governmental decision at issue is the District's approval of a contract awarding additional work to Stantec to restore a creek bed when Director Glaser's employer is a subcontractor on the project. Specifically, under the project, the District seeks to protect in place District sewer infrastructure using FEMA money due to deterioration of a creek bed caused by storms from 2023-2024. Director Glaser did not directly participate in formulating Rincon's bid.

Further, the District is considering contracting for additional professional engineering support services where Rincon is either the prime contractor or a subcontractor. The District is also considering extending the term of the existing agreement for engineering support services in which Rincon serves as the subcontractor.

## ANALYSIS

Under Section 1090, 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.) When Section 1090 is applicable to one member of a governing body of a

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.)

Director Glaser is subject to Section 1090's conflict of interest provisions and would be making a contract if the District entered into a contract with Rincon to perform work on a District project. The primary question, therefore, is whether Director Glaser would have a financial interest in the contract between the District and Stantec where Rincon is the subcontractor and, if so, whether any exception to Section 1090 would allow the District to enter the contract with Stantec.

#### **A. Financial Interest.**

“Financial interest” under Section 1090 is given a broad analysis and includes grants or contracts that may directly or indirectly benefit the officer. The California Supreme Court has explained what constitutes a financial interest under Section 1090:

[T]he term “financially interested” in section 1090 cannot be interpreted in a restricted and technical manner. (*People v. Honig, supra*, 48 Cal.App.4th at p. 315.) The defining characteristic of a prohibited financial interest is whether it has the potential to divide an official's loyalties and compromise the undivided representation of the public interests the official is charged with protecting. (See *Stigall v. City of Taft, supra*, 58 Cal.2d at p. 569.) Thus, that the interest “might be small or indirect is immaterial so long as it is such as deprives the [people] of his overriding fidelity to [them] and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good.” (*Terry v. Bender* (1956) 143 Cal. App. 2d 198, 208 [300 P.2d 119]; see also *Thomson v. Call, supra*, 38 Cal.3d at p. 645 [direct and indirect interests are equally prohibited].)

(*Lexin v. Superior Court* (2010) 47 Cal. 4th 1050, at p. 1075.)

Here, Director Glaser is employed as a biologist for Rincon and does not hold a primary management position. She is not an officer or director, and she has no ownership interest in Rincon. Under Section 1090, whether she performs work on proposed District projects or receives a benefit from a contract between the District and her employer does not determine whether Director Glaser has an interest in Rincon's contracts. (See *ibid.*) As an employee, she has an interest in Rincon and its continuing financial success. Based on this relationship, Director Glaser has a financial interest in Rincon's contracts, including as a subcontractor to any contract with the District and Stantec.

Considering this financial interest, Director Glaser may not participate in any decisions related to the execution of a contract between the District and Rincon. Moreover, under Section 1090, a member of a public agency's governing body is conclusively presumed to participate in the making of a contract under the governing body's authority, regardless of whether the member in fact participates in the making of that contract. (*Thomson, supra*, 38 Cal.3d at pp. 649-650.) Accordingly, Section 1090 prohibits both Director Glaser from participating in, and the District from entering into, an agreement between the District and Stantec unless an exception applies.

**B. Remote Interest.**

Statutory exceptions to Section 1090 exist where the financial interest involved is a “remote interest” or a “noninterest.” The exception that may apply under the facts provided here is the remote interest set forth in Section 1091(b)(3).

Section 1091(a) provides:

An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Section 1091(b)(3) defines a “remote interest” to include:

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

- (A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.
- (B) The contract is competitively bid and is not for personal services.
- (C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.
- (D) The contracting party has 10 or more other employees.
- (E) The employee or agent did not directly participate in formulating the bid of the contracting party.
- (F) The contracting party is the lowest responsible bidder.

Here, the facts provided indicate that the remote interest exception under Section 1091(b)(3) applies. First, the District is located in Santa Barbara County, which has a population less than 4,000,000. Second, all contracts for professional engineering services are competitively bid. Third, Director Glaser is not in a primary management capacity with Rincon, is not an officer or director, and holds no ownership interest. Fourth, Rincon has more than 10 employees. Fifth, Director Glaser did not directly participate in formulating Rincon’s bid to Stantec. Finally, Rincon is a subcontractor for Stantec, which was the lowest responsive and responsible bidder. Under this exception, Director Glaser would be required to recuse herself from decisions and discussions regarding the contract.

Based on the foregoing analysis, Director Glaser is disqualified from taking part in the District’s consideration and potential approval of the District’s contract with Stantec, with Rincon as a subcontractor. Under Section 1091(a), she is required to disclose her remote interest in the contract to the District, have the remote interest noted in the District’s records, and abstain from taking part in the decision. Under Section 1091(a), she is required to disclose her remote interest in

the contract to the City Council, have the remote interest noted in the City Council's records, and abstain from taking part in the decision.<sup>2</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.  
Senior Counsel, Legal Division

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<sup>2</sup> Because Section 1090 prohibits Director Glaser from taking part in the contracting process involving Rincon, no further analysis under the Act is necessary provided she recuses herself from the decision. Under the Act, she must follow the recusal requirements outlined in Regulation 18707(a), which includes the further requirement that Director Glaser recuse herself and leave the room after identifying her economic interests. (Regulation 18707(a)(1)(C).)