



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

January 9, 2025

Tom Walker  
Supervisor-Elect for the Tehama County Board of  
Supervisors  
20070 Plains Drive  
Red Bluff, CA 96080

Re: Your Request for Advice  
**Our File No. A-24-137**

Dear Mr. Walker:

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.

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 Tehama 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).)

## QUESTIONS

1. Do you have a disqualifying financial interest in Tehama County Board of Supervisors' annual budget approval decisions relating to the Office of the County Counsel due to your spouse's employment as an associate attorney at Prentice Long, PC ("Prentice Long"), the law firm under contract with Tehama County to provide County Counsel services?

2. Do you have a financial interest under the Act or Section 1090 in County decisions regarding the Prentice Long contract for County Counsel services that prohibits your participation in contract decisions?

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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

1. Under the Act, you have a source of income interest in Prentice Long, due to your spouse's employment with the firm. However, you are not prohibited from taking part in a budget decision regarding the allocation of funds to Prentice Long for the preexisting contract when there is no discretion in making the allocation, because the decision is ministerial. Additionally, the annual budget decision regarding the County Counsel Office implicates only in-house employees and cannot otherwise alter the flat monthly payment rate set for Prentice Long's contract services. Accordingly, Prentice Long is not explicitly involved in the annual budget decisions and there is no indication of a financial or other impact on Prentice Long as a result of the decisions. Therefore, you do not have a disqualifying interest in the annual budget decisions under the standards set forth in Regulation 18702.1 or Regulation 18702.3(b), discussed below.

2. As a general matter, under the Act it is reasonably foreseeable that a decision on the County's contract with Prentice Long would have material financial impact on Prentice Long as a source of income interest. Further, under Section 1090, which applies to contract decisions, you have a financial interest in your spouse's employment with Prentice Long, in the law firm's financial success and your spouse's continued employment. Under the Act and Section 1090, you have a disqualifying interest in the decisions and may not make or participate in making any contract decisions regarding Prentice Long. However, to the extent that all the factors in Section 1091(b)(2) are met, your interest is a "remote" interest, and the County may make these decisions so long as you satisfy the disclosure and recusal requirements as specified under the Act and Section 1090 discussed below.

## FACTS AS PRESENTED BY REQUESTER

You are a Supervisor-Elect for the Tehama County Board of Supervisors ("Board") and will take office in January 2025. Your spouse is an attorney and has been employed by the law firm Prentice Long for almost five years. The law firm has 26 employees. She is an associate at the law firm and does not have any ownership or profit sharing in the firm.

Prentice Long, and specifically the managing partner, Margaret Long, currently has a contract effective as of August 2023 with Tehama County ("County") to provide County Counsel services at a fixed flat rate per month. The payments are set by the contract and cannot be changed during the contract term, which is set by statute at four years. The contract term began before you ran for office. Ms. Long is the County Counsel for Tehama County under this contract, and several of her employees, including your spouse, are sworn Deputy County Counsel. Your spouse has been a sworn Tehama Deputy County Counsel for over two years. Your spouse currently does not have any assignments in Tehama County to avoid any appearance of conflict but remains a sworn Deputy County Counsel under the contract between the County and Prentice Long. She was not involved in any manner in the bid process between the law firm and the County related to the contract for services.

The Board makes an annual budget decision that affects County departments, including the County Counsel's Office. You note that there are employees of the County in the County Counsel's office who are not employees of Prentice Long. The County Counsel's Office budget includes the salaries for two in-house attorneys and three in-house staff, as well as supplies. The annual budget

approval affects only the County Counsel's Office in-house (County) employees. Prentice Long does not use any County supplies. The annual budget decision also includes the Prentice Long contract, as a line item for "outside vendors." Margaret Long, upon our request for clarification, provided additional information by email regarding this process. The approval of the annual budget allows the funds for the Prentice Long contract to move from the General Fund to the County Counsel's budget to pay for the existing approved contract, at the existing contract rate. As a result of the contract in place, no further allocations are considered regarding Prentice Long and its compensation during the annual budget approval. The budget for PLPC is set in the contract, so the annual budget cannot modify or increase the Prentice Long contract budget amount.

Once the budget is approved, the Board has no control over how each department spends its allocation. The Chief Administrative Officer ("CAO") and his fiscal officer prepare a proposed budget and present it to the Board in several public meetings. Prentice Long is not involved in any of the budgeting decisions. Approvals for the rate-set monthly payments under the Prentice Long contract are made by the Fiscal Officer/Auditor and are not subject to Board approval.

## ANALYSIS

### *The Act*

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include, pertinent to these facts, any source of income aggregating \$500 or more in value provided, promised to, or received by the public official within 12 months prior to the time when the decision is made.

Section 82030(a) defines "income" to include a community property interest in a spouse's income. Due to your spouse's employment, you have a source of income financial interest in Prentice Long.<sup>2</sup>

### *Foreseeability & Materiality*

Regulation 18701(a) states that an effect on an interest is presumed to be reasonably foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or the subject of, a governmental decision before the official or the official's agency. Relevant to these facts, a financial interest is the "subject of a proceeding" if the decision

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<sup>2</sup> Currently, because your spouse does not have an ownership interest in the firm, you do not have a financial interest under the Act in clients of the firm. However, in the event that your spouse were to acquire a greater than 10 percent ownership interest in Prentice Long, you would also have a source of income interest in any client of the firm, where your spouse's pro rata share of income received from that client exceeds \$500 or more in the 12 months prior to a decision. (See Section 82030.)

involves the issuance, renewal, approval, denial or revocation of any contract with the financial interest.

When an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b), which states: "if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

Where the source of income is a business entity, we look to the materiality standards in Regulation 18702.1 to determine if a government decision will have a material financial effect on the official's source of income. (Regulation 18702.3(a)(4).) Regulation 18702.1(a)(1) provides that the reasonably foreseeable effect of a government decision on the official's business as a source of income interest is material if the business is a named party in, or the subject of, the decision.

#### *County's Contract with Prentice Long Decisions*

No specific contract decision affecting Prentice Long is at issue at this time. The parties have an existing contract that was agreed upon prior to your election to office which sets the monthly flat rate fee for services. However, as a general matter, you will have a disqualifying interest and may not participate in County decisions regarding the Prentice Long contract for County Counsel services, because Prentice Long would be a named party in the contract and would be the subject of the decision. Under Regulation 18702.1(a)(1), it is reasonably foreseeable that such a decision would have a material financial impact on your source of income interest in Prentice Long due to your spouse's employment. Therefore, you would have a disqualifying interest and may not participate in contract decisions explicitly involving Prentice Long. Similarly, as a general matter, you would have a disqualifying interest in any particular budget decision that affects Prentice Long as a named party in or subject of the decision.

#### *County's Annual Budget Decision*

Although Prentice Long is listed as an "outside vendor" in the annual budget, the decisions regarding the annual budget cannot modify the allocation amount set by the contract in any way. The annual budget enables the pre-determined and contractually obligated funds under the Prentice Long contract to be moved to the County Counsel Office's budget. Therefore, although Prentice Long appears in the annual budget decision, it is not a "named party in" or "the subject of" the decision. Further, where a decision is "ministerial, secretarial, or clerical," this type of decision is an exception to the definition of "making, participating in, or influencing a governmental decision." (Regulation 18704(d). We have advised that where an allocation is previously approved and cannot be contested in a budget decision, the approval of that amount is ministerial. (See *Grimes* Advice Letter, No. A-84-012.) We note that to the extent the annual budget decision regarding the line item for the Prentice Long contract allocation is merely ministerial, you would not be "making or participating in making" a decision regarding the allocation. Therefore, you are not prohibited from participating from taking part in a budget decision regarding the allocation of funds to Prentice Long for the preexisting contract when there is no discretion in making the allocation, because the decision is ministerial. However, because the annual budget decision involves decisions related to

the County Counsel's Office's in-house employees' salaries and supplies that are not ministerial, we provide a further analysis under Regulations 18702.1 and 18702.3.

Where the annual budget decision does not explicitly involve Prentice Long, Regulation 18702.1(a)(2) and (3) provides the applicable materiality standards. The reasonably foreseeable financial effect of a governmental decision on an official's interest in a business entity including a source of income is material if either applies:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than \$1,000,000 or five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than \$250,000 or one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.

Under the above standards, you will have a disqualifying financial interest in any decision that would affect Prentice Long's annual gross revenues, assets or liabilities, or expenses at the stated thresholds. The facts indicate that the decisions affecting the County Counsel's Office are anticipated to have no impact on the Prentice Long contract, and therefore, you would not have a disqualifying financial interest in the annual budget decision under Regulation 18702.1(a)(2) or (3).

#### *Source of Income: Nexus Test*

In addition to the above standards, Regulation 18702.3(b) provides an alternate standard for an interest in a source of income that must be considered. Under this "nexus test," the financial effect is material "if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal." You will have a disqualifying interest and may not participate in a decision that may achieve, defeat, aid, or hinder a purpose or goal of Prentice Long where your spouse receives or is promised the income for achieving the purpose or goal. As stated above, there is no indication that the annual budget decision will have any impact on Prentice Long or its goals or purpose. Therefore, you do not have a disqualifying interest in the annual budget decision under the nexus test.

#### *Recusal Under the Act*

We note that when a public official who holds an office specified in Section 87200 (including Board members) has a disqualifying interest in a decision noticed at a public meeting, the official must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in the decision as well as details of the economic interest on the record of the meeting; (2) recuse, and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.)

### *Section 1090*

Additionally, in regard to a contract decision affecting the County's contract with Prentice Long, we must also analyze the application of Section 1090, a separate body of law applicable to contract decisions. 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 any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of" their respective 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.) 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 v. Taft, supra*, 58 Cal.2d at p. 569.) 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.) An officer is conclusively presumed to be involved in the making of agency contracts when the officer is a member of a board or commission that has the authority to execute the contract at issue. (*Id.* at pp. 645 and 649.) Finally, when Section 1090 applies to one member of a public entity's governing body, 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.)

We note that Section 1090 applies to the renewal or any modifications of an existing contract. (See *City of Imperial Beach v. Bailey, supra* [exercising a renewal option and adjusting the payment rates is making a contract within the meaning of section 1090].) Where an existing contract requires periodic renegotiation of payment terms, modifying such terms constitutes the making of a contract. (81 Ops.Cal.Atty.Gen. 134 (1998).) Sending the payment issue to arbitration or merely allowing the existing terms to continue untouched and intact also constitutes the making of a contract. (89 Ops.Cal.Atty.Gen. 49 (2006); 8 Ops. Cal.Atty.Gen.134 (1998)).

As an elected County Supervisor, Section 1090 applies to you. You have a financial interest in the contract between the County and your spouse's employer, Prentice Long. It is well-established that an employee has a financial interest in contracts their employer executes with a public agency (89 Ops.Cal.Atty.Gen. 278, 280 (2006), and that an officer is financially interested in their spouse's source of income for purposes of Section 1090. (See, e.g., 78 Ops.Cal.Atty.Gen. 230, at p. 237.) As a member of the Board, your participation in any County contract decision is presumed, irrespective of whether you actually participate in the making of the contract. (*Thomson, supra*, at pp. 645, 649.)

### *Remote Interests & Non-Interests*

However, the Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed a "remote interest," as defined in

Section 1091, or a “noninterest,” as defined in Section 1091.5. When a “remote interest” is present, the contract may be made if (1) the officer in question discloses their 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); 88 Ops.Cal.Atty.Gen. 106,108 (2005).)

Under Section 1091(b)(2), an official has a remote interest in a contract entered into by the body or board of which the official is a member if the official is an employee or agent of the contracting party and all of the following factors are present: 1) The contracting party has 10 or more employees; 2) The employee has been an employee or agent of that party for at least 3 years prior to the official’s term in office; 3) The employee owns less than 3 percent of the shares of stock of the contracting party; 4) The employee is not an officer or director of the contracting party; and 5) The employee did not directly participate in formulating the bid of the contracting party.

Under the facts provided, your spouse’s law firm has more than 10 employees; your spouse has worked at the firm for more than 3 years as of the date you will take office; she does not have any ownership interest in the law firm and is not an officer or director of the law firm. The facts state that she did not participate in formulating the bid for the existing contract. To the extent that each of these factors is met for a decision involving the County’s contract with Prentice Long, you will have a remote interest under Section 1091(b)(2) in the decision. Under this exception, the County may make decisions regarding its existing contract with Prentice Long, so long as you disclose your financial interest in the contract, it is noted in the official records, and you abstain from any participation in renewing the contract. In order to satisfy the Act’s recusal requirements, you must also leave the room during any discussion or vote, as noted above. This recusal will satisfy the requirements of both the Act and Section 1090. However, if the above factors in Section 1091(b)(2) are not met, for example, if your spouse were to gain an ownership interest in the law firm, this remote interest will not apply. We recommend in that instance that you seek additional advice for the specific decision involved.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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