



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 13, 2025

Michele Bagneris
City Attorney
100 North Garfield Avenue, Room N210
P.O. Box 7115
Pasadena, CA 91109-7215

Re: Your Request for Advice
Our File No. A-24-141

Dear Ms. Bagneris:

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 Pasadena City Councilmember Jason Lyon from taking part in decisions concerning land use permits or a potential City agreement concerning California American Water (“Cal-Am”) based on the fact that Cal-Am is a client of his law firm and the firm would be paid by Cal-Am for professional services in unrelated matters?

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

No. Under the provisions of Section 1090, the noninterest exception under Section 1091.5(a)(10) would apply to a decision regarding the contract so long as neither he nor his law firm receives any “remuneration, consideration, or commission” as a result of Cal-Am’s potential contract with the City. In addition, under the Act and based on the facts provided, it is not reasonably foreseeable that the decisions on the potential contract or land use permits would have a material financial effect on Councilmember Lyon’s financial interest in his law firm as a business entity and source of income. There is no indication that the decisions will affect the law firm’s gross income, assets or liabilities and there is no nexus shown to exist between a goal of the law firm and Councilmember Lyon’s compensation to the extent the law firm removes him from profit-sharing with respect to any fees related to any matter involving Cal-Am.

FACTS AS PRESENTED BY REQUESTER

As City Attorney for the City of Pasadena, you seek this advice on behalf of Councilmember Lyon, a partner in the law firm Hahn & Hahn, concerning whether he may participate in the City Council’s consideration of an administrative suit and land use permits involving a prospective client of Hahn & Hahn.

Councilmember Lyon was elected to the Pasadena City Council on June 7, 2022, and assumed office on December 12, 2022. In his private capacity, Councilmember Lyon is a partner with the Pasadena-based law firm of Hahn & Hahn. Through his separate, wholly owned professional corporation, Councilmember Lyon is a part of owner of Hahn & Hahn. At the present time, his ownership interest in that law firm is less than ten percent (10%). He has obtained income from Hahn & Hahn aggregating \$500 or more in the last 12 months through his professional corporation.

As of September 16, 2024, Hahn & Hahn hired an Of Counsel attorney to do mergers and acquisitions work. Among his other clients, the attorney has performed such work for Cal-Am since 2019. Cal-Am has inquired about retaining the attorney through Hahn & Hahn to continue performing mergers and acquisitions work.

Cal-Am owns a reservoir located in Councilmember Lyon’s district. The City has filed an administrative complaint against Cal-Am related to the reservoir that is pending before the California Public Utilities Commission. The administrative action concerns the safety of the existing reservoir. At some point in the future, an agreement between Cal-Am and the City may be executed as a result of the action. Hahn & Hahn, including Councilmember Lyon, has not and will not perform work for Cal-Am related to the administrative action, and will not receive any compensation from Cal-Am as a result of the outcome of the administrative action or any executed agreement.

It is also anticipated Cal-Am will seek land use permits from the City for the reservoir including temporary use permits and/or conditional use permits, and it is foreseeable that other matters involving Cal-Am may come before the City Council. Hahn & Hahn, including Councilmember Lyon, has not performed work for Cal-Am related to land use permits coming before the City Council, and neither the firm nor the Councilmember would receive any compensation from Cal-Am as a result of the outcome of any land use permits.

In sum, Hahn & Hahn does not and would not represent or advise Cal-Am or the City in the City's administrative complaint or on any matter relating to the reservoir in Pasadena, nor will Councilmember Lyon represent or advise Cal-Am on any matters, related or unrelated. If retained by Cal-Am to provide legal work on mergers and acquisitions, Hahn & Hahn will implement an ethical wall between Councilmember Lyon and all Cal-Am matters.

Hahn & Hahn would be paid for its services performed for Cal-Am based on an agreed hourly rate for each hour of work performed. Revenue from work performed for Cal-Am is anticipated to be less than \$1 million and less than 5% of the firm's total revenue. Hahn & Hahn will not compensate Councilmember Lyon to achieve a particular result in any City decision either on behalf of the firm or Cal-Am, 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 Cal-Am. Hahn & Hahn has the ability to remove Councilmember Lyon from profit-sharing with respect to any fees related to any matter involving Cal-Am, but would only elect to do so if necessary to avoid a conflict of interest.

ANALYSIS

Section 1090

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. 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) 103 Cal.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.) 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.) 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.)

Notably, when members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract. (*Thomson v. Call, supra* at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).)

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 1091.5.² Pertinent to the facts here is Section 1091.5(a)(10), which 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”

In the *Ennis* Advice Letter, No. A-23-051, we found Section 1091.5(a)(10) did not apply where Councilmember Lyon’s firm would be representing the entity seeking to enter into an amended agreement with the City based on the Attorney General’s conclusion that the phrase “an attorney of the contracting party” under the noninterest exception pertains to the representation of the client in matters *unrelated* to the contract at issue with the government entity. (See 101 Cal.Ops.Atty.Gen. 1, 7 fn.76 (2018).)

Here, the primary issue is whether Section 1091.5(a)(10) would apply to allow Councilmember Lyon to participate in any agreement between the City and Cal-Am as a result of the administrative action filed by the City. The facts state that Hahn & Hahn, including Councilmember Lyon, has not and will not provide representation to Cal-Am with respect to the administrative action, and will not receive any compensation from Cal-Am as a result of the outcome of the administrative action or any executed agreement.³

Instead, you state that the law firm recently hired an attorney specializing in mergers and acquisitions who previously performed such work for Cal-Am, and Cal-Am has inquired about retaining that attorney through Hahn & Hahn to continue performing merger and acquisition work. As Councilmember Lyon has an ownership interest of less than ten percent, the noninterest exception under Section 1091.5(a)(10) would apply to the extent neither he nor Hahn & Hahn receives any “remuneration, consideration, or commission” as a result of Cal-Am’s potential contract with the City as a result of the pending administrative action.⁴

The Act

The Act’s conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material

² To determine whether an official has a “financial interest” in a contract within the meaning of Section 1090, it is appropriate to look to the provisions of the remote and noninterest exceptions contained in sections 1091 and 1091.5, respectively. (See, e.g., 85 Ops.Cal.Atty.Gen. 34, 36 (2002).)

³ Note that we typically look to general principles of contract law to determine whether a contract is involved in the decision (84 Ops.Cal.Atty.Gen. 34, 36 (2001)), while keeping in mind that “specific rules applicable to sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of ‘contract.’” (*People v. Honig, supra*, at p. 351.) You state that Cal-Am will be seeking land use permits from the City. In prior advice letters, we have found that the permit process is regulatory in nature and not a contract for purposes of Section 1090. (See, e.g., *Bettenhausen* Advice Letter, No. A-16-229 [City’s permitting process for marijuana cultivation is regulatory in nature and not a contract under Section 1090]; *Miller* Advice Letter, No. A-15-229 [Commercial Activity Permits issued by district to use vessels in the district harbor for commercial purposes are regulatory in nature].) Therefore, we do not analyze the land use permits Cal-Am intends to apply for under Section 1090.

⁴ The fact that Cal-Am will compensate Hahn and Hahn for mergers and acquisitions work unrelated to the pending administrative action and any potential contract between the City and Cal-Am is not “remuneration, consideration, or a commission as a result of the contract,” and does not change the conclusion.

financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) Pertinent to your request, an official's interests that may give rise to a disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- A business interest in any business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any management position. (Section 87103(d).)
- A source of income interest in any source from whom the official receives \$500 or more in value in the 12 months prior to when the decision is made including a pro rata share of income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Sections 82030 and 87103(c).)
- An interest in the official's personal finances including those of immediate family members. (See Section 87103.)

With respect to decisions concerning Cal-Am, Councilmember Lyon has identified a financial interest in Hahn & Hahn as a business interest and source of income, because he is a partner at the law firm and will receive more than \$500 income from the firm in any 12-month period. Because his ownership interest in the law firm is less than a 10 percent interest, he does not have a source of income interest in Cal-Am as a client of the law firm. (Section 82030.) We look solely to the reasonably foreseeable impact of the decision on his law firm as a business entity and source of income interest.

Foreseeability and Materiality

Regulation 18701(a) provides that a decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision as a named party in, or the subject of, the decision. An interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). The facts indicate Councilmember Lyon's law firm is not explicitly involved in the potential Cal-Am decisions concerning potential land permits or agreement with the City as a result of the pending administrative action, as it is not named in the decision nor is it the subject of the decision. Regulation 18701(b) sets forth the foreseeability standard applicable here, for a decision's effect on an official's interest that is not explicitly involved in the decision. It provides that the effect of the decision on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Business as a Source of Income

For a business entity not explicitly involved in the decision, Regulation 18702.1(a)(2) provides that the decision's reasonably foreseeable financial effect is material if the decision may result in an increase or decrease of the business's annual gross revenues, or the value of the

business's assets or liabilities, in an amount equal to or more than \$1,000,000, or five percent of the business's annual gross revenues and the increase or decrease is at least \$10,000.

Regulation 18702.3 sets forth the materiality standards with respect to an official's source of income interest. Regulation 18702.3(a)(4) provides that a decision's reasonably foreseeable financial effect on an official's source of income interest in a business entity is material if the business entity "will be financially affected under the materiality standards of Regulation 18702.1," discussed in the above paragraph. Additionally, under the "nexus" standard in Regulation 18702.3(b), "[a]ny reasonably foreseeable financial effect on a source of income to a public official or the official's spouse 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."

Therefore, the Act would prohibit Councilmember Lyon from taking part in City decisions concerning Cal-Am if it is reasonably foreseeable that the decision may result in an increase or decrease of his law firm's annual gross revenues, or the value of its assets or liabilities, in an amount equal to or more than \$10,000. The Act would also prohibit Councilmember Lyon from taking part in the decision, if the decision will further or hinder a goal of his law firm, and Councilmember Lyon is promised income for achieving this goal.

There are no facts to support that the potential decisions concerning Cal-Am will have a reasonably foreseeable and material financial effect on Hahn & Hahn under the above standards. Hahn & Hahn, including Councilmember Lyon, is not providing legal services to Cal-Am with respect to the potential City decisions, and there are no facts showing that the law firm would otherwise have a realistic possibility of a financial effect from the decision. Furthermore, to the extent the law firm removes Councilmember Lyon from profit-sharing with respect to any fees related to any matter involving Cal-Am, there would be no nexus shown to exist between a goal of the law firm and Councilmember Lyon's compensation.

Accordingly, based on the facts provided, there is no evidence that the City decisions concerning Cal-Am would have a reasonably foreseeable or material financial effect on Councilmember Lyon's business and source of income interest in the Hahn & Hahn law firm. (Regulations 18701, 18702.1 and 18702.3.)

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

