



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 9, 2025

Gary B. Bell
General Counsel
Olympic Valley Public Service District
555 University Ave., Suite 275
Sacramento, CA 95825

Re: Your Request for Formal Advice
Our File No. A-25-046

Dear Mr. Bell:

This letter is in response to your request for advice on behalf of Olympic Valley Public Service District (the District) officials President Dale Cox, Director Katy Hover-Smoot, and Director Richard Koffler (collectively, the District Officials) regarding the Political Reform Act¹ (the Act) and Section 1090. 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 Placer 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

Do the District Officials have a prohibitive conflict of interest under the Act or Section 1090 in District contracts or decisions involving the purchase of the Olympic Valley Mutual Water Company (the Company) given that each District Official is a Company "shareholder" and Director Koffler serves as the Company's noncompensated Director and Treasurer?

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.

CONCLUSIONS

Under the Act, the public generally exception applies because at least 15 percent of the residential real property within the District would be affected by the decisions, and the respective official's interests would not be uniquely affected. Accordingly, the District Officials may participate in decisions regarding the District's purchase of the Company under the public generally exception.

Under Section 1090, the District Officials are officers of the District and do not receive a salary from the Company for their memberships. Thus, as a nonsalaried member of the Company, which is a nonprofit company, the noninterest exception under Section 1091.5(a)(7) applies. As long as their interests in the Company are disclosed to the District's board at the time of the first consideration of the contract, and their interests are noted in the District's official records, Section 1090 does not prohibit the District Officials from taking part in the negotiation and sale of the Company.

Director Koffler is also an officer of the Company. Under Section 1091.5(a)(8), he has a "noninterest" in the Company as an uncompensated officer because the Company's primary purpose supports the functions of the District and the facts provided indicate that the acquisition would not result in compensation or financial gain to him. As long as the District's acquisition of the Company does not involve the distribution of assets or any compensation to Director Koffler, the noninterest exception under Section 1091.5(a)(8) applies. If his interests are noted in the District's official records, then Section 1090 does not prohibit Director Koffler from taking part in the negotiation and sale of the Company.

FACTS AS PRESENTED BY REQUESTER

A. The District and the Company.

The District covers an area of approximately 9.9 square miles, equal to 63,420 acres or 276,260,878 square feet. The District's population year-round is estimated to be approximately 1,000 people, with a maximum overnight population of approximately 7,000. During winter holiday periods, the daily population temporarily increases, up to a maximum peak of 25,000 persons traveling to take part in winter sport activities and lodging. The District provides water services for 44 commercial entities and approximately 1,600 residential units.

The Company is a mutual water company, as that term is defined in section 14300 of the Corporations Code, as well as a "non-stock, non-profit mutual water company" subject to the Nonprofit Mutual Benefit Corporation Law (Corporations Code, § 7110 et seq.) and exempt from taxation under section 501(c)(12) of the Internal Revenue Code. The Company's Articles of Incorporation state its purposes are:

- (1) To distribute, supply and deliver water for domestic use to members of this corporation, and such other natural or artificial persons as this corporation may be empowered and authorized by law, to deliver water to without losing its status as a non-profit, non-stock, mutual water company; at actual cost plus necessary expenses.

(2) That said corporation does not contemplate pecuniary gain or profit to the members thereof.

(3) To purchase, hold, have, use and enjoy real or personal property necessary for the uses and purposes of said corporation.

The Company serves the Olympic Vally community with water supply, sewage management, solid waste collection, fire protection, and emergency medical assistance. It includes an area of approximately 0.186 square miles, equal to 120 acres or 5,208,781 square feet. The Company serves 280 “residential property lots,” within the District’s boundaries. Within the District’s boundaries, there are approximately 775 street addresses zoned for residential use. Thus, 36 percent of residential real properties within the District receive water service from the Company. The District Officials own their respective residences within the service area of the Company and receive water from it.

All real property owners in the Company’s service area become members and “shareholders” in the Company because of their ownership of real property in the service area. Thus, the District Officials each own “mutual water stock” in the Company because of their ownership of the real property within the Company’s service area. Mutual water stock is appurtenant to the land that affords shareholders the right to water service. Shareholders generally cannot sell their stock separately from their property and do not receive income from the stock. However, if a shareholder becomes delinquent in payment of assessments, the shares may be sold to a new purchaser or forfeited to the Company and, upon dissolution, the Company’s gains, profits, or dividends may be distributed to shareholders.

The shares of mutual water stock owned by landowners within the Company’s boundaries are similar to memberships that afford shareholders the right to delivery of water and to vote on certain Company matters, such as the Company’s Board of Directors and amending articles of incorporation. Company membership is limited to those persons or entities having fee title to land within its boundaries. The “shareholders” or “members” of the Company do not receive profits or dividends from the Company. In no event can a Company member/shareholder sell interest in the Company for gain separate from a transfer of the underlying property.

B. The District’s Acquisition of the Company.

The District is governed by five members of its Board of Directors. It will be considering: whether to enter into an Exclusive Negotiation Agreement with the Company for the District’s potential purchase of the Company; holding various meetings and negotiating other agreements with the Company regarding this potential purchase, coordination of services, and use of facilities; potentially acquiring the Company’s assets, including Company stock; and possibly operating the Company as a separate legal entity from the District or providing water services by and through the District to current Company service recipients.

The District’s acquisition of the Company is necessary to ensure current Company customers continue to receive quality water service in the future. The Company has requested the District consider acquisition or consolidation because the Company currently faces significant financial strain, operational challenges, management and staffing instability, and aging infrastructure. In light of these growing pressures, acquisition is necessary to ensure that Company

customers continue to receive essential governmental services, such as water services, as there is no other viable water service provider in the Olympic Valley area.

The Company does not have a full-time staff of professionals to operate its system. It currently contracts externally for water system operators and struggles to attract and retain qualified personnel. Its current service operators live far from Olympic Valley and are on-site only three days per week, which poses significant risks during emergencies and periods of limited vehicle access; for instance, during winter storms when road closures are common. The Company's operation also relies heavily on two board members who volunteer hundreds of unpaid hours annually. The Company would be at immediate risk if either or both members were to become unavailable. Acquisition is necessary to resolve these staffing issues, as the District would be able to devote full-time professionals to operating the water system, responding in emergency circumstances, and providing consistent system monitoring.

The Company's costs for outsourcing operations, maintenance, engineering and administrative services are also high. The Company estimates its operating and capital improvement costs will surpass \$830,000 in 2024-2025, which equates to an average rate of \$3,000 per member. The Company also anticipates these costs are likely to continue to increase at a rate exceeding inflation. Consolidating with the District would reduce these high costs by eliminating redundancies and spreading expenses across a larger ratepayer base.

The Company's system was originally constructed in the 1950s which requires the Company to incur significant costs to replace, rehabilitate, and maintain its system. A major system failure or catastrophic event could rapidly deplete the Company's capital reserves and the Company would likely find it difficult to secure emergency loans or secure an alternate water source in such an event. The District possesses greater resources to operate and maintain the Company's system and improvements and withstand system disruptions.

Approximately 280 residential properties currently receive water service from the Company. The provision of clean, safe, potable water to these residential properties is fundamental to protect public health and the continued legal habitability of these properties. Access to clean and safe water is a basic necessity and continued water service is also necessary to adequately respond to emergency situations like wildfire events. The cessation or inadequate provision of water services to Company's area, which is located in a Very High Fire Hazard Severity Zone, would have potentially devastating effects on public health and safety.

Were the District to acquire the Company, current customers could expect to see a decrease in water rates as the District, being a public agency subject to Proposition 218, could only charge customers for the reasonable costs of providing water service – a constitutional limitation that does not apply to the Company. The District would also have a team of full-time, dedicated staff to oversee and monitor system and water service, which could result in improved customer service and operational response time given the Company's current staffing challenges.

C. The District Officials.

Each of the District Officials owns one lot, approximately 0.28 and 0.3. acres in size containing one single family residence. The properties are substantially similar to other single family homes and lots in the District. None of them owns or operates a farm or ranch on the

property, or uses the property in a way that requires unusual or atypical amounts of water consumption.

In addition to being a shareholder and member of the Company based on his residential real property ownership, Director Koffler also serves as the Company's Director and Treasurer; however, he receives no compensation from the Company.

ANALYSIS

A. The Act.

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using their position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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).)

Under Sections 87100 and 87103, the potential economic interests that may give rise to a disqualifying conflict of interests under the Act include business entities (including investments), real property, sources of income, and personal finances. Because the Company is a nonprofit, it does not qualify as a business entity for purposes of the Act. (See Section 82005.) However, the officials each have an interest in their respective real property and personal finances. Likewise, if an official would receive \$500 or more from the Company as a result of the sale, the Company would qualify as a source of income.

1. Foreseeability and Materiality.

When a public official's economic interest is explicitly involved in a governmental decision, Regulation 18701(a) provides:

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial 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 financial interest, including any decision affecting a property interest as described in Regulation 18702.2(a)(1)-(6).

Where 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 set forth in Regulation 18701(b), which provides:

A financial effect need not be likely to be considered reasonably foreseeable. In general, 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.

Regulation 18702.2(a)(1)-(6), which sets forth materiality standards for an interest in real property, provides in relevant part:

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision:

[¶]

(2) Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries;

(3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;

[¶]

(5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property; or

(6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.

The facts provided state that the District would potentially purchase the Company, coordinate its services, use its facilities, potentially acquire its assets, including Company stock, and possibly operate the Company as a separate legal entity from the District or provide water services by and through the District to the Company's current customers. These decisions relating to the purchase of the Company would generally involve water fees for the properties served by the Company and the entitlement of water services to the property, and the District Officers' respective interests in their properties would be explicitly involved. Under the applicable regulations, it is reasonably foreseeable that the decisions identified have a material financial effect on the officials' interests. Accordingly, the officials would generally be disqualified from the decision, barring an applicable exception.

2. The Public Generally Exception.

The Act does not prohibit an official from taking part in a decision if the financial effect on a public official's financial interest is indistinguishable from its effect on the public generally. Under Regulation 18703, the public generally exception applies if the official establishes that a significant segment of the public is affected, and the official's financial interest is not unique compared to the effect on the significant segment. A significant segment of the public includes at

least 25 percent of residential real property within the official's jurisdiction, or at least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(1)(B), (b)(2).) A unique effect is defined in Regulation 18703(c) to include a disproportionate effect on:

- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- (2) The official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
- (3) The official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.
- (4) The official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.
- (5) A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.
- (6) The official's personal finances or those of the official's immediate family.

Here, each District Official's interest stems from an interest in their primary residence. Based on the facts provided, the Company serves 280 "residential property lots" in the District, and within the District's boundaries there are approximately 775 street addresses zoned for residential use. Thus, 36 percent of residential real property within the District receives water service from the Company. All real property owners in the Company's service area become members and shareholders in the Company as a result of their ownership of real property in the service area. Thus, decisions affecting the entire service area of the Company would affect a significant segment of the public. Moreover, the facts do not indicate that the District's purchase of the Company would uniquely affect the District Officials. Accordingly, barring any other financial interest in the decisions and in the absence of a unique effect, the District Officials have established that the public generally exception applies based on the facts provided, and they may generally take part in District decisions relating to the purchase of the Company.

B. Section 1090.

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.)

However, the Legislature has created various statutory exceptions to the Section 1090 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. Noninterests under Section 1091.5 are “interests that, while technically within the scope of the financial interests covered by section 1090, as a practical matter do not raise the sorts of conflict of interest problems with which section 1090 is concerned and thus are statutorily excluded from its purview.” (*Lexin v. Superior Ct.* (2010) 47 Cal. 4th 1050, 1073–74.)

1. The District Officials.

Section 1091.5(a)(7), provides that an officer or employee shall not be deemed to be interested in a contract where the officer’s interest is: “That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.”

Here, the Company is a 501(c)(12) nonprofit mutual water company. The District Officials are members of the Company and do not receive a salary from the Company for their memberships. Thus, the noninterest exception under Section 1091.5(a)(7) applies. As long as their interests in the Company are disclosed to the District’s board at the time of the first consideration of the contract, and their interests are noted in the District’s official records, Section 1090 does not prohibit the District Officials from taking part in the negotiation and sale of the Company.

2. Director Koffler.

In addition to being a Company shareholder and member based on his residential real property ownership, Director Koffler also serves as an officer of the Company as its Director and Treasurer. However, he receives no compensation from the Company.

Section 1091.5(a)(8) provides that an officer or employee shall not be deemed to be interested in a contract where the officer’s interest is:

That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

The Company is a 501(c)(12) tax exempt nonprofit mutual water company. The facts provided state that the Company’s primary purpose is, in short, to “distribute, supply and deliver water for domestic use to members of this corporation.” Among other services, the District water supply to the Olympic Vally community. The Company’s primary purpose, therefore, supports the functions of the District. The next question is whether the acquisition would result in compensation or financial gain to Director Koffler.

The facts provided indicate that the acquisition would not result in compensation or financial gain to the Company or Director Koffler. As noted above, Director Koffler does not receive a salary from the Company. He volunteers as Director and Treasurer of the Company in a volunteer capacity. The only theoretical way in which he could receive some form of compensation would be as a result of his "mutual water stock" ownership, which is appurtenant to his real property, rather than his volunteer positions with the Company. However, the Company is a nonprofit that does not contemplate pecuniary gain or profit to its members; its members do not receive profits or dividends from the Company, and in no event can a member sell interest in the Company for gain separate from a transfer of the underlying property.

Although the Company's gains, profits, or dividends may be distributed to shareholders upon its dissolution, the facts here indicate that this acquisition would not involve any compensation to Company shareholders, including Director Koffler. The Company, not the District, has requested that the District consider acquisition or consolidation. The Company currently faces significant financial strain, operational challenges, management and staffing instability, and aging infrastructure. The Company has staffing issues, contracts externally for water system operators, struggles to attract and retain qualified personnel, and relies heavily on two board members who volunteer hundreds of unpaid hours annually. The District's acquisition would enable full-time professionals to operate the water system. The Company's costs for outsourcing operations, maintenance, engineering and administrative services are high, and it anticipates these costs will increase at a rate exceeding inflation. Acquisition would reduce costs by eliminating redundancies and spreading expenses across a larger ratepayer base and would ensure that Company customers receive essential water services, as there is no other viable water service provider in the Olympic Valley area. In sum, these facts indicate the Company does not have any value or assets from which any gains, profits, or dividends could be distributed to the Company's shareholders after the District's acquisition.

As long as the District's acquisition of the Company does not involve the distribution of assets or any compensation to Director Koffler, the noninterest exception under Section 1091.5(a)(8) applies. If his interests are noted in the District's official records, then Section 1090 does not prohibit Director Koffler from taking part in the negotiation and sale of the Company.

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

JF:aja