



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond and Commissioners Cardenas, Hatch and Hayward

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Advice Letter Report and Commission Review

Date: March 11, 2019

The following advice letters have been issued since the February Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. Full copies of FPPC Advice Letters, including those listed below, are available at: <http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Conflict of Interest

Steven J. Block

[I-18-250](#)

County retirement association board member is not prohibited from privately selling bank shares. However, if the official sells shares to a business entity that conducts business with the board, the official will have an interest in the business entity as a source of income and is disqualified from governmental decisions with a foreseeable and material effect on the business entity or a parent, subsidiary, or other related business entity.

William L. McClure

[I-18-272](#)

The Act's conflict of interest provisions prohibit a city councilmember, who is also a paid contractor for a non-profit funded by a grant from the Chan-Zuckerburg Initiative, from taking part in governmental decisions concerning applications by Facebook, for projects on property owned by Facebook, only if there is a realistic possibility that the non-profit employing the councilmember will receive a measurable financial benefit or, with respect to her leasehold interest, the decision will change the termination date of her lease, increase or decrease the potential rental value, change her actual or legally allowable use of the property, or impact her use and enjoyment of the property.

Peter J. Nolan

[A-18-274](#)

The Act prohibits a city councilmember from taking part in decisions regarding a cannabis ordinance, as well as the appeal of a dispensary's operating permit, because the official has a source of income interest in the dispensary, which was his former employer and one of four dispensaries in the city. However, the Act does not prohibit a different city councilmember, whose spouse was previously offered a job by a dispensary, from taking part in decisions relating to a proposed ordinance to update the City's enforcement and penalty provisions applicable to cannabis businesses permitted by the city absent facts indicating a connection between the decision and the prior job offer.

Michael C. Ghizzoni**[A-19-001](#)**

County supervisor is not prohibited from taking part in a minor conditional use permit decision regarding the construction of frost ponds on a neighboring property to the official. Because the ponds are located over 4,000 feet from the official's property, the properties in question are all zoned agricultural and the agricultural water use is already occurring, and the county anticipates a "less than significant" environmental impact for water evaporation, it does not appear that the decision would contribute to a reasonably foreseeable change in the value of the official's business of leasing its land for continued agricultural use or impact the official's adjacent land's market value, character, use, income producing potential or development potential.

Veronica Nebb**[A-19-002](#)**

The Act prohibits a mayor from taking part in governmental decisions relating to the city's potential provision of financial assistance for the reconstruction of a long-shuttered community theater located approximately 300 feet from the mayor's residential rental property, but does not prohibit the mayor from taking part in decisions relating to a proposed project to redevelop a 0.9-acre property located 837 feet from the mayor's residential rental property.

Sarah J. Knecht**[A-19-009](#)**

A city councilmember may not take part in governmental decisions related to the proposed development of a new police station and relocation of a weekly farmer's market. Given the official's business entity and leasehold interests related to his nearby restaurant approximately 286 feet from the proposed site, the decision would likely affect the amount of business the official's restaurant receives.

Amy Webber**[A-19-010](#)**

Under Section 87407, a public official may not take part in a governmental decision "directly relating" to any person with whom she is negotiating or has any arrangement concerning prospective employment. Because it is foreseeable that the official's prospective employer, a nonprofit rental housing owner association, will receive a measurable benefit or detriment as a result of a tenant protection ordinance, the official may not participate in the ordinance decision until she rejects or is rejected for the consultant position. If the official accepts the employment, the official is also similarly prohibited from taking part in the decision under the Act's conflict of interest provisions. However, if the official declines employment with the association, the official is not prohibited from participating in the tenant protection ordinance, due to her real property interest in a tri-plex rental property under the public generally exception.

Keith Storton**[A-19-011](#)**

A city councilmember may take part in governmental decisions relating to a local festival, despite the potential effect on the official's business, under the public generally exception. Based upon the facts provided, the city has just 18,000 residents and the festival is attended by approximately 100,000 people and 300 vendors. The festival also encompasses 6 blocks and 100 stores. Accordingly, it appears that at least 25 percent of city's businesses would likely see a comparable increase in profitability based on an increased number of customers brought in by the festival and there is no indication of a unique effect on the official's business.

Richard D. Pio Roda[A-19-012](#)

The Act does not prohibit a city councilmember from taking part in decisions relating to a 45-unit multifamily residential development project located 1,438 feet from the councilmember's residence because it is not reasonably foreseeable that those decisions would have a material financial effect on the councilmember's real property interest in her residence.

Celeste Stahl Brady[A-19-017](#)

While decisions pertaining to a city's planned project to improve and operate city-owned affordable housing properties would have a reasonably foreseeable and material financial effect on two "tenant commissioners" of a housing authority, the tenant commissioners are legally required representatives of affordable housing tenants. Accordingly, the effect of the decision on the commissioners is deemed indistinguishable from the effect on the public generally and the Act does not prohibit the commissioners from taking part in the decisions.

Campaign**Melissa Barton**[I-18-142](#)

A 501(c)(6) member organization may become a separate committee from its sponsored committee if certain criteria are met. Additionally, the source of contributions made by a sponsor from its member dues to its sponsored committee are the individual dues paying members regardless of whether the funds are earmarked. The applicable contribution limit in this situation is provided in Section 85303, which prohibits a person from making a contribution to a committee of more than \$7,800 per calendar year for the purpose of making contributions to candidates for elective state office.

Section 1090**David J. Andres**[A-18-207](#)

Directors of city sanitary district, with interests in entities affiliated with Native American organization requesting the review and modification of a district ordinance, are not prohibited from taking part in the ordinance under Section 1090 because the ordinance in question is not a contract but a regulatory matter. Moreover, the directors are not prohibited from taking part in the decisions under the Act. In regard to a director whose spouse is employed by a nonprofit health center affiliated with the organization, it is not foreseeable that the ordinance decision will have a material effect on the health center. For director employed by tribal council, the potential financial effect on the organization or council is not disqualifying under the Act's public generally exception for decisions involving the adjustment of a fee for public services.

Caren Ray Russom[A-18-266](#)

Both the Act and Section 1090 prohibit a mayor from making or participating in the making of a regulatory agreement with a project developer, where the company that employs the official's spouse performed architectural work for the development project. However, the city may enter the agreement pursuant to the remote interest exception set forth in Section 1091(b)(8) for a supplier of goods and services.

Phaedra Norton[A-18-268\(a\)](#)

Section 1090 does not prohibit a city from contracting with a planning commissioner's employer, so long as the planning commissioner is not involved in the making of the contract in his official capacity and plays no role in influencing the making of the contract.

William L. McClure[A-18-273](#)

The Act's conflict of interest provisions prohibit a councilmember employed by Facebook from taking part in governmental decisions concerning applications by Facebook or a wholly owned subsidiary of Facebook for projects on property owned by Facebook. In addition, the councilmember may not take part in property-related applications by owners of property in close proximity if a prudent person would find it reasonably foreseeable that the decision would contribute to a change in Facebook's stock price. With respect to decisions involving the City's General Plan or Transportation Master Plan, the councilmember may not participate where Facebook is explicitly involved, or where it is not explicitly involved and a prudent person would find it reasonably foreseeable that the decision would contribute to a change in Facebook's stock price. Lastly, assuming the councilmember has a financial interest in a development agreement between the City and Facebook, Section 1090 does not prohibit the city from entering the contract as the official's interest as an employee of Facebook is a remote interest under Section 1091(b)(2).

Heather L. Stroud[A-18-276](#)

Section 1090 does not prohibit the city from entering a contract with a firm for engineering design services for a road safety and mobility project. Although the firm provided preliminary design services for the project under a previous contract, for purposes of Section 1090, the firm did not participate in the making, or unduly influence the city regarding, the subsequent contract.

Heather L. Stroud[A-19-004](#)

Section 1090 does not prohibit the city from entering a contract with a firm for engineering design services for a greenbelt and storm water improvement project. Although the firm provided preliminary design services for the project under a previous contract, the firm did not participate in the making, or unduly influence the city regarding, the subsequent contract.

Tom Schroeter[A-19-006](#)

Despite a city councilmember's disqualifying financial interest under Section 1090 resulting from the ownership of a business operating from city's airport, the "rule of necessity" would allow a city to contract for repairs necessary to comply with Federal Aviation Administration standards and continue to operate safely. However, the financially interested councilmember must abstain under Section 1090.

Lynn Tracy Nerland[A-19-014](#)

The remote interest exception under Section 1091(b)(1), which expressly applies to 501(c)(3) nonprofit organization employees, would also apply to a city councilmember who provided financial/bookkeeping services for a 501(c)(3) organization as an independent contractor. Therefore, the City may enter into a grant agreement with the nonprofit, so long as the councilmember recused herself from the decision.