



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

To: Chair Miadich and Commissioners Baker, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Subject: Advice Letter Report
Date: May 26, 2023

The following advice letters have been issued since the April 28, 2023, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the June 15, 2023, Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Section 84308

Jonathan Velasquez

[I-23-065](#)

In general, contracts are considered entitlement for use proceedings for purposes of Section 84308 regardless of value. Accordingly, small contracts, including purchase orders, are subject to Section 84308's provisions. Likewise, charter school petitions, which are also contracts, are subject to Section 84308. However, labor contracts, such as collectively bargained project labor agreements, are expressly exempted from Section 84308.

Eric May

[I-23-077](#)

When a landowner initiates a process to change the use designation of a specific parcel of property under the County's general plan, both the pre-application to authorize the filing of a formal application, and the formal application for a general plan amendment, are "proceeding[s] involving a license, permit, or other entitlement for use" under Section 84308. Under the existing regulatory language and the most conservative reading of 84308, the proceeding should be considered "pending" once the pre-application has been submitted.

Campaign

Jazmin Flores

[A-23-093](#)

In connection with an August 15, 2023, election in San Diego County, candidates and committees may use a filing schedule that combines the semi-annual campaign statement with the first pre-election statement. The combined statement will be due on July 6, 2023, covering the period from the day after the closing date of the last statement filed, through July 1, 2023.

Conflict of Interest

Jeff Ballinger[I-23-045](#)

Notwithstanding preexisting contract between City and Councilmember's client to plan and host annual parade, the Act prohibits the Councilmember from contacting or appearing before any city official on behalf of the client to influence a decision relating to the parade because it is reasonably foreseeable that those decisions would have a material financial effect on his interest in his business and client, which are named parties in and the subjects of any decisions regarding the parade.

Marian L. Slocum[A-23-068](#)

Planning Commissioner does not have a disqualifying conflict of interest with respect to a decision on a redevelopment project that would result in his spouse relocating to a new office space. Because the office space is rented on a month-to-month basis, the Commissioner does not have a property interest in the leased property. Additionally, the spouse's employer would not be financially affected by the decision under the materiality thresholds applicable to an interest in a business entity including a source of income.

Hazel Joanes[A-23-079](#)

Planning Commissioner is prohibited from taking part in a decision involving a building permit for a residence adjacent to the Commissioner's real property unless there is clear and convincing evidence the decision would have no measurable impact on the Commissioner's real property.

Matthew T. Summers[A-23-082](#)

Planning Commissioner does not have an interest in property resulting from his law firm's leased property because a month-to-month tenancy is not a "real property interest" subject to the conflict of interest rules under the Act. Moreover, because it is not reasonably foreseeable a proposed project will have a material effect on the Commissioner's law firm merely because the project is located near the law firm, the official is not disqualified from the project decisions.

Rick Hernandez[A-23-090](#)

Planning Commissioner does not have a disqualifying conflict of interest in a decision to approve a two-unit residential infill project located over three-quarters of a mile from his residence, because the facts presented do not show clear and convincing evidence that the governmental decision would have a substantial effect on the official's property.

Revolving Door

Russ Nichols[I-23-058](#)

Former agency manager is prohibited under the one-year ban from making appearances or communications in certain proceedings before his former agency as a consultant. However, the one-year ban does not apply to the former manager's appearances before state agencies that are not under the direction and control of the former agency. The Act's permanent ban prohibits the former manager from participating in certain proceedings involving specific parties, or even assisting others in the proceedings, if the former manager previously participated in the

proceedings while employed by the state agency regardless of whether the proceeding is before the former manager's prior agency.

Section 1090

Mary Horst

[A-23-019](#)

Where a state agency's former employee previously worked as a program manager and was responsible for and participated in the development of the grant proposal at issue, Section 1090 prohibits the state agency from approving a grant application from an applicant that employs the former employee and has designated the former employee as its contact person and project lead on the grant application.

Barbara Thompson

[A-23-004](#)

Neither the Act nor Section 1090 prohibit County Supervisor from participating in decision to lend money to another government entity where her spouse is employed. Under the Act, the spouse's salary from a governmental entity is not considered income. Thus, the Supervisor is not disqualified from decisions involving the governmental entity barring any other economic interest in the decision. Similarly, under Section 1090, the Supervisor's interest in her spouse's employment with a public agency is a noninterest under Section 1091.5(a).

William Roetzheim

[A-23-050](#)

An independent contractor with a duty to advise the agency on a vendor's work order authorizations, as well as costs and contract amendment negotiations, is subject to Section 1090. The contractor may not participate in the making of a contract in which the contractor has a financial interest. Moreover, if the contractor's business sells or gives a license to the vendor to use software provided by the contractor's business, the contractor will have a prohibited financial interest in the agency's contract with the vendor, and the contractor may not continue to advise the agency on the specifications for the contracts pursuant to Section 1090.

Derek P. Cole

[A-23-059](#)

Neither the Act nor Section 1090 prohibit officials from taking part in decisions by the City Council regarding the City's request for proposals for a vendor to serve as concessionaire at City events for the next year, merely because each of these officials is an uncompensated officer of a bidding nonprofit organization. The officials are not compensated by their respective nonprofit organizations and thus have no interest in them under the Act. Similarly, the officials have a noninterest in any contract under Section 1091.5(a)(8) because they are not compensated, and a primary purpose the respective nonprofit organizations supports the functions of the City Council.

Daniel S. Hentschke

[A-23-062](#)

Section 1090 prohibits City from canceling a request for proposals and entering a second contract with a contractor where the contractor's duties under its initial contract included engaging in and advising on public contracting on behalf of the City, including the specific task of drafting the request for proposal for the second contract.

Jason Zaragoza

[A-23-071](#)

Section 1090 prohibits Councilmember from taking part in contract decisions involving school districts where he is a paid consultant. However, the remote interest exception under Section 1091(b)(13) pertaining to government salary applies to allow the City to enter such contracts so long as the Councilmember abstains from any participation in the making of the contracts.

Jamie Azpeitia-Sachs

[A-23-076](#)

Section 1090 prohibits a board member from taking part in contract decisions involving a charter school where her company provides dance instruction to the school. However, the remote interest exception under Section 1091(b)(8) applies to allow the board to enter such contracts because the board member has provided those services to the charter school for more than seven years.

Charles Nesbit

[A-23-085](#)

Section 1090 does not prohibit the City from contracting with the same firm to design and build the sign where the City previously hired the design firm to provide an initial concept design or rendering for the sign. Under these facts, the design firm was not entrusted with transacting on behalf of the government when it contracted with the City to provide the initial concept design and Section 1090 would not apply.