



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Baker, Ortiz, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Subject: Advice Letter Report
Date: October 27, 2023

The following advice letters have been issued since the September 29, 2023, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the November 16, 2023, Commission Meeting. Full copies of the FPPC Advice Letters, including those listed below, are available at [the advice search](#).

Conflict of Interest

Celeste T. Rodriguez

[I-23-134](#)

Under the Act, city mayor is disqualified from participating in any decisions related to the City’s Downtown Master Plan because it is reasonably foreseeable the financial effect on the official’s real property interest located 200-300 feet from the Proposed Master Plan is material under applicable regulations. Additionally, the facts presented do not establish that the “public generally exception” applies, and the decisions cannot be “segmented” under Regulation 18706, due to each decision’s relationship to enhancing the Downtown Master Plan Area in close proximity to the official’s property. Lastly, the “legally required participation” exception does not permit an official to cast a tie-breaking vote if the official is otherwise disqualified.

Elisa Mikiten

[A-23-149](#)

The Act does not prohibit a planning commissioner from taking part in decisions concerning the design standards of a development within 500-1000 feet of her residence. Based on the facts provided, the decisions will not impact the viability of the development, which has already been approved by the City Council, and it is not reasonably foreseeable the design standard decisions will have a material financial effect on her residence, which has no view of the development, has no direct vehicle access to the development, and is separated from the development by nine residential lots and a baseball field.

Stephen P. Deitsch

[A-23-151](#)

The Act prohibits a council member from taking part in the City’s decision to revise its short-term vacation rental ordinance due to his source of income interest in his radio station business’ client (a vacation rental property management company that purchases advertising). Based on the facts presented, it is reasonably foreseeable that the client’s gross revenues, assets/liabilities or expenses would be affected in the amounts set forth in Regulation 18702.1(a)(2) and (3). Moreover, the public generally exception would not be applicable as the decision would have a

disproportionate effect on the client due to the large number of properties it manages.
(Regulation 18703(c).)

Revolving Door

Mitch Weiss

[I-23-142](#)

The Act's one-year ban does not prohibit a former public official, seeking employment with a registered state lobbyist, from meeting with staff and officials of other agencies whose budgets, personnel, and other operations are not directed or controlled by the official's former state employer to discuss programs, projects, or funding issues, including projects that will or might request an allocation of funds from the former agency. However, the permanent ban may apply to proceeding in which the former official previously participated.

Section 1090

Gary S. Winuk

[A-23-117](#)

Former state agency alternate board member is subject to the Act's revolving door provisions. However, these provisions do not preclude the official from seeking employment with the former agency, as the bans do not apply where the future employment is with a state agency. The official is not prohibited under Section 1090 from seeking a position with her former agency, because the official did not participate, personally or presumptively as a board member, in any decisions or actions related to the position. The position was not vacant at the time the official left office, and the official only generally discussed her future interest in this type of position with staff. Also, the board did not take any action regarding the specific employment position other than making compensation decisions general to the class of positions.

Kurt C. Wendlenner

[A-23-121](#)

Section 1090 does not prohibit City from entering two proposed grant agreements with a contractor for youth programming services notwithstanding the fact that the City previously entered multiple grant agreements with same contractor to provide similar services. While the prior grant agreements indicate that the contractor had duties to transact on behalf of the City and that the contractor is therefore subject to Section 1090, the facts provided indicate that the contractor did not participate in the making of the two proposed grants through its services under the prior grants.

Gary S. Winuk

[A-23-126](#)

Section 1090 prohibits the chair of a district board from resigning and entering into an employment contract with the district to the extent that the board has engaged in planning or discussions about filling an employment position, including beginning a recruitment process under the presumption of participation in board actions. However, the board's actions to place the current CEO on leave, engage in litigation discussions/decisions regarding the position, and hire an acting CEO do not meet the criteria of having participated in the making of the future CEO employment contract. Moreover, the board member has not otherwise acted to influence the making of the future CEO contract to promote his personal financial interest in the position.

Based on these facts, the contract would not be prohibited under Section 1090 if the board member resigned prior to the board's consideration of the employment position.

David J. Ruderman[A-23-132](#)

A non-profit established by a city constitutes a government entity for purposes of the Act and Section 1090 where: (1) the impetus for formation of the entity originated with the city; (2) the entity's initial funding came from the city; (3) the non-profit's principal purposes are to provide services public agencies are legally authorized to perform and, in fact, traditionally have performed; and (4) the non-profit is treated as a public entity by other laws. Nonetheless, under Section 1090, the renewal of a month-to-month tenancy involving a tenant of the government-formed non-profit's building, who also serves as a director of the non-profit, does not constitute an impermissible renewal of a contract. Moreover, the Act does not prohibit the tenant from serving as a director but may prohibit the tenant from taking part in subsequent decisions that have a reasonably foreseeable financial effect on the tenant's personal finances.

Douglas T. Sloan[A-23-133](#)

Under Section 1090, a city councilmember has a disqualifying financial interest in a potential contract between the city and a school district for the purchase of an auditorium where the councilmember owns a business that has conducted business regularly with the school district for 25 years. However, because the councilmember's business has been a supplier of goods or services to the potential contracting party for at least five years before her most recent election to office, the councilmember's financial interest is "remote" under Section 1091(b)(8) and the city may contract with the school district if the disqualified councilmember properly recuses herself.

Brian Doyle[A-23-144](#)

A city official employed by a state university and a city official whose spouse is employed by the same university are not prohibited from participating in city decisions to annex the university's campus under the Act, because there are no facts showing that the decisions will affect either employee's personal finances and the Act excludes salary and benefits from a governmental agency from the definition of income. As to the Section 1090 prohibitions and the contract decisions involved in the annexation process, the facts indicate that the noninterest exception for government salaries in Section 1091.5(a)(9) is applicable. The contracts are general to the state university's fees to be paid to the city as part of the annexation, do not directly involve the department that employs the officer or the officer's spouse, and will not affect the salary or benefits of the two positions.

Timothy Carmel[A-23-148](#)

A community services district board member who sits as a noncompensated officer on a nonprofit, as does the board member's spouse, has a noninterest in a decision affecting the nonprofit organization's bid for a swim facility on district property under Section 1091.5(a)(8) where the nonprofit has a purpose of building, funding, and operating a swim recreation facility and seeks to do so on land the district board manages. The decisions may be made so long as the board member's interests are noted on the record. The board member is similarly not prohibited from taking part in the decision under the Act, due to his or his spouse's role on the nonprofit, as there are no facts indicating the decision would affect their personal finances.