



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

August 26, 2022

Timothy J. Carmel
City Attorney
City of Arroyo Grande
300 E. Branch Street
Arroyo Grande, California 93420

Re: Your Request for Advice
Our File No. A-22-071

Dear Mr. Carmel:

This letter responds to your request for advice on behalf of City of Arroyo Grande Council Member Kristen Barneich, regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under 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 San Luis Obispo 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 Council Member Barneich have a conflict of interest under Section 1090 in decisions involving a City contract with a company that intends to employ her adult daughter?

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

Under the facts provided, Council Member Barneich does not have a financial relationship with her adult child, who has graduated from college, moved out of state, and does not receive financial support from her parents. Therefore, under Section 1090, Council Member Barneich does not have a financial interest in the decisions involving a City contract with a company that intends to employ her adult daughter under.²

FACTS AS PRESENTED BY REQUESTER

The City of Arroyo Grande currently contracts with a marketing firm, Verdin Marketing, for services related to promoting the City as a tourism destination. Council Member Barneich has an adult daughter who is 21 years old and recently graduated from UC Santa Cruz. Member Barneich's daughter has an opportunity to do freelance social media work for Verdin Marketing, but to date has not done any work for them. Because her daughter was a full-time student under 24 years of age for at least 5 calendar months of the year, she is considered a dependent under IRS regulations for tax year 2022, and Council Member Barneich and her spouse will claim her as a "dependent" on their 2022 taxes. You state that Council Member Barneich's daughter will no longer be a dependent for IRS purposes in 2023.

In follow-up emails, you stated that, after graduating from UC Santa Cruz in June, Council Member Barneich's daughter moved to Hawaii. While she was away at college her parents provided her with \$1,450 per month and paid for her college tuition. That stopped in June, when she graduated college. Council Member Barneich's daughter and her parents now intend for her support herself as she is a college graduate and living out of state.

ANALYSIS

Section 1090 provides that public 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.) 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.)

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.) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although

² We caution that this conclusion is limited to the provisions of the Act and Section 1090. The Fair Political Practices Commission cannot provide advice outside of these provisions. Accordingly, we express no opinion regarding the potential application of common law conflict of interest provisions.

Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (See e.g., *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002).)

As you note, an official has a “remote interest” under Section 1091(b)(4) in the earnings of his or her minor child, which would allow a board’s participation in a decision, so long as the official did not participate in any manner.³ However, the Section 1090 statutory scheme makes no reference to interests in an adult child. Past Attorney General Opinions have found that absent a financial relationship between adult relatives (such as a legal obligation to support an adult child, a parent’s incapacity, or a shared ownership interest) the official does not have a “financial interest” under Section 1090 when the contract involves an official’s adult relative.⁴ Under the facts provided, Council Member Barneich does not have a financial relationship with her adult child, who has graduated from college, moved out of state, and does not receive financial support from her parents. Therefore, Council Member Barneich does not have a financial interest in the decisions involving a City contract with a company that intends to employ her adult daughter under Section 1090.⁵

While her participation in the decision in her role as a member of the City Council is not prohibited under Section 1090, we note that a family relationship may require recusal under the common-law doctrine against conflicts of interest. However, as we cannot provide advice outside of the Act and Section 1090, we express no opinion regarding the application of this doctrine.

³ (See Section 1091(a).)

⁴ 92 Ops. Cal. Atty. Gen. 19, (2009) [official did not have a financial interest under Section 1090 in agency’s loan to son’s solely-held corporation despite parent-adult child relationship and shared apartment rental where there were no circumstances showing a legal duty for either party to support the other]; and citing 28 Ops.Cal.Atty.Gen. 168, 169 (1956) [family relationship between county supervisor and his adult brother did not result in a violation of Section 1090 where the brother sold automobiles to the county but there was not a proprietary interest or entitlement for contribution or support between the adult brothers].

⁵ The facts do not indicate that Council Member Barneich has a financial interest in her adult daughter for purposes of the Act. (Section 87103.) Accordingly, the disqualification provisions of the Act do not apply based on the facts provided, and no further analysis under the Act is necessary.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:aja