



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

December 15, 2022

James R. Williams
Santa Clara County Counsel
County Government Center
70 West Hedding Street
East Wing, 9th Floor
San Jose, California 95110-1770

Re: Your Request for Advice
Our File No. A-22-123

Dear Mr. Williams:

This letter responds to your request for advice 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, including Public Contract Code.

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 Santa Clara 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

Under the Act and Section 1090, may Deputy County Executive Ky Le take part in contracting processes between Santa Clara County and 501(c)(3) non-profit Destination: Home, given that Mr. Le also serves as a non-compensated member of the Destination: Home Governing Board?

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

Yes. Under the Act, as a non-compensated officer of a non-profit organization, no potentially disqualifying economic interest is implicated by Mr. Le's volunteer work. With respect to Section 1090, as long as no other economic interest is implicated by a contract between the County and Destination: Home, Mr. Le's non-compensated work does not constitute a prohibited "financial interest" in any potential contract. However, he must ensure that his interest in Destination: Home is noted in the County's official records.

FACTS AS PRESENTED BY REQUESTER²

Ky Le is a Deputy County Executive and his County responsibilities include oversight and supervision of the County's Office of Supportive Housing. Mr. Le is also a noncompensated member of Destination: Home's Governing Board.

In November 2016, Santa Clara County voters approved the \$950 million affordable housing bond known as Measure A to address the housing needs of the community's most vulnerable residents. The Office of Supportive Housing is the County department responsible for implementing the Measure A housing bond and, more broadly, is tasked with increasing the supply of housing and supportive housing that is affordable and available to extremely low income and special needs households. The Office of Supportive Housing works closely with contracted service providers and other entities, including Destination: Home, to effectuate its mission of meeting the housing needs of vulnerable members of the community.

Destination: Home is a 501(c)(3) tax-exempt organization under the Internal Revenue Code that created a public-private partnership for the purpose of ending homelessness in Santa Clara County. Destination: Home's Articles of Incorporation specifically provide that their "specific and primary purpose . . . [is] to end homelessness in Santa Clara County" which includes "[s]upporting the goals of the Santa Clara Community Plan to End Homelessness and the intent to make homelessness rare, brief and non-recurring in Santa Clara County by providing additional funds necessary to support the development and operation of permanent supportive and rapid re-housing units in Santa Clara County" and "[s]trategically partnering with local public and private partners to[] share in the joint approach of preventing and reducing homelessness for the Santa Clara County community's poorest and most vulnerable residents." In furtherance of its mission, Destination: Home developed multiple county-wide community plans to end homelessness. Its most recent 2020-2025 Community Plan to End Homelessness was adopted by the County of Santa Clara Board of Supervisors on August 25, 2020. Destination: Home's work also includes supporting the County's implementation of the Measure A housing bond.

As a member of Destination: Home's Governing Board, Mr. Le does not receive any compensation from Destination: Home for his service.

The County contracts with Destination: Home in connection with a number of prevention and housing programs, including, for example, the Homelessness Prevention System ("HPS"),

² This request, as well as the advice provided below, is substantively identical to advice provided to former Santa Clara County Chief Operating Officer Miguel M?rquez in *Mitra* Advice Letter, No. A-19-167. Mr. Le assumed Mr. M?rquez's responsibilities related to Destination: Home on September 15, 2022, after Mr. M?rquez left County service.

through which Destination: Home is responsible for helping households with the highest needs avoid homelessness by providing longer-term financial assistance, case management services, employment services, legal services, childcare, and transportation. Through a separate contract with the County, Destination: Home supports the Continuum of Care Lived Experience Advisory Board by providing stipends and administrative services to its members, who are previously homeless individuals who have received supportive services in Santa Clara County, and are performing work for the Office of Supportive Housing to ensure that the department's services are designed and informed by former clients' actual experiences receiving services. The County also contracts with Destination: Home for research and evaluation of its services to improve the supportive housing system, enhance outcome-driven programs, and increase efficiency in data analysis and reporting. The current total value of Destination: Home's contracts with the County is around \$5,235,800. It is likely that the County will continue to partner with Destination: Home in connection with prevention and housing programs to address homelessness in Santa Clara County.

ANALYSIS

The Act

Section 87100 of the Act provides, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on certain enumerated economic interests. (Section 87103.) Among these enumerated interests is “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” “Income,” however, does not include “travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.” (Section 82030(b)(2).)

Mr. Le is a non-compensated member of Destination: Home's Governing Board. Accordingly, to the extent he has no other economic interests in the decision, the Act's conflict of interest provisions would not prohibit Mr. Le from taking part in a decision involving Destination: Home.

Section 1090

Section 1090 provides, “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees 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 members.” However, Section 1091.5 provides that an officer or employee “shall not be deemed interested in a contract if his or her interest is . . . [t]hat of a noncompensated officer of a non-profit, 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.” (Section 1091.5(a)(8).) For the purposes of Section 1091.5(a)(8), “an officer is ‘noncompensated’ even though he or she receives reimbursement from the nonprofit, tax-

exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.”

Destination: Home is a 501(c)(3) non-profit organization. Mr. Le is an officer of Destination: Home and not compensated for his work. Destination: Home’s objective is to end homelessness in Santa Clara County. The County also has an interest in achieving that objective, as evidenced by the County Board of Supervisors’ endorsement of the 2020-2025 Community Plan to End Homelessness. Accordingly, Destination: Home’s primary purpose supports the functions of the County and Mr. Le has a “noninterest” in Destination: Home as an uncompensated officer of the organization. As long as his interest as a non-compensated Officer of Destination: Home is noted in the County’s official records, and he does not have any other economic interests involved, Section 1090 does not prohibit him from taking part in contracts between the County and Destination: Home.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Counsel, Legal Division

KMC:aja