



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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Re: Your Request for Advice  
**Our File No. A-24-090 and A-24-091**

Dear Ms. Barga and Ms. Liu:

This letter responds to your requests for advice on behalf of the Solano Emergency Medical Services Cooperative (“SEMSC”) and the City of Fairfield’s (“City”) Fire Chief John Sturdee and Deputy Fire Chief Robb Herrick (collectively, the “Fairfield Fire Chiefs”) regarding the Political Reform Act (“Act”) and Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest or as to the permissibility of such contracts under AB 389 or Section 1797 of the Health and Safety 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 Solano 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).)

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<sup>1</sup> 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.

## QUESTIONS

1. Under Section 1090, may the City Manager Representative and the Fairfield Fire Chief Representative on the SEMSC Board participate in the Request for Proposals (“RFP”) process and possible award of a contract with a private ambulance provider, and subsequent contract between the City and SEMSC, or as members of the Joint Exercise of Powers (“JEPA”) Executive Committee, where the City of Fairfield would receive additional funds?

2. Would the answers to the question above also apply to fire chiefs from other jurisdictions, who may advise the City as representatives of their respective agencies or act as the fire chief representative board member of the Joint Powers Authority?

3. Under the Act, would the City Manager Representative, Fairfield Fire Chief Representative, and fire chiefs from other jurisdictions have a disqualifying conflict of interest in the above-referenced decisions?

## CONCLUSIONS

1. Section 1090 does not preclude the City Manager Representative and the Fairfield Fire Chief Representative from participating in these decisions based on their interests in their agency employer, because the “noninterest” exception under Section 1091.5(a)(9) applies, and they may participate so long as this interest is disclosed to the SEMSC Board and noted in its official records.

2. Section 1090 does not preclude fire chiefs from other jurisdictions, who may advise the City as representatives of their respective agencies while serving on the JEPA Executive Committee or representative board member of the Joint Powers Authority, because the “noninterest” exception under Section 1091.5(a)(9) applies, and they may participate so long as this interest is disclosed to the board and noted in its official records.

3. No. Although the Act prohibits public officials from taking part in governmental decisions that would have reasonably foreseeable, material financial effects on the officials’ economic interests including sources of income, government salary and benefits are not considered “income” under the Act. Barring any other interests in the decision, the officials would not have disqualifying financial interests under the Act.

## FACTS AS PRESENTED BY REQUESTER

The SEMSC is a Joint Powers Authority, created pursuant to the Joint Exercise of Powers Act (Gov. Code §6500 et seq.). It is comprised of public agencies in Solano County, including the County of Solano, several cities (e.g., the Cities of Benicia, Fairfield, Vallejo, and Rio Vista, among others), and several fire protection districts (e.g., the Montezuma and Cordelia Fire Protection districts, among others).

The SEMSC is governed by a seven-member board, including a city manager selected by the Solano County City Managers from a city that is a member of the JPA, a fire chief selected by the Solano-Napa Counties Fire Chiefs organization from a city or fire protection district that is a member of the JPA, and representatives of medical service providers and consumers. The Fire

Chief Representative must be selected from a different agency than the City Manager Representative.

#### *The Current Contract*

The SEMSC historically, pursuant to a competitive process, has contracted with a private ambulance company for the provision of emergency medical services under which the ambulance provider is required to respond to medical emergencies within certain timeframes or pay a penalty to SEMSC when the response times are not met. The SEMSC contract allows for the response times to be less stringent in those geographic areas where the private ambulance provider has separately contracted with a local public agency member of the JPA that employs medical professionals (e.g., paramedics) to respond to medical emergencies first (“Advanced Life Support or ALS response”), thereby reducing the ambulance provider’s operating expenses relative to responding in those zones. Pursuant to that separate contract, referred to as the Public-Private Partnership (PPP) contract, the ambulance provider pays those participating fire agencies a respective share of the value of the ambulance provider’s cost savings based on a negotiated formula.

#### *The Proposed Contract*

The SEMSC Board is in the process of preparing a new RFP seeking responses from parties interested in contracting with the SEMSC to provide ambulance and related services within a designated geographic area. A member of SEMSC, the City of Fairfield, is coordinating with the other SEMSC member agencies to enter into a new agreement (“JEPA”), authorizing Fairfield to submit a proposal to SEMSC to be selected as the exclusive ambulance provider on behalf of the JEPA member agencies.

If SEMSC awards the contract to Fairfield, Fairfield would be responsible for managing the day-to-day ambulance operations including billing ambulance patients and paying a private ambulance subcontractor for any services rendered subject to the advice and consultation of a seven-member executive committee. This executive committee is proposed to be comprised of the six participating city fire chiefs plus one fire district chief representing the 6 participating fire protection districts in the JEPA. Fairfield will enter into new separate agreements with those fire agencies that provide ALS response to replace the existing PPP contract.

As a public ambulance provider, Fairfield will be eligible to participate in the Public Provider Ground Emergency Medical Transport Intergovernmental Transfer Program (“Transfer Program”) that provides increased reimbursements for the provision of ground emergency medical transport services to Medi-Cal beneficiaries which would generate additional income that is not available to a private ambulance provider. Per the JEPA, the Fairfield Fire Department would be paid an administrative fee for overseeing the ambulance subcontractor and billing for ambulance services. Any excess revenues beyond paying the private ambulance subcontractor will be used to establish an operating reserve. Once the reserves are funded to a negotiated amount, the JEPA Executive Committee, which would include the Fire Chief Representative on the SEMSC Board, would be consulted on how Fairfield should use and/or distribute the excess revenue.

Under the proposed ambulance services arrangement, the City of Fairfield would assume the lead role in administering the agreement with SEMSC or the County. The management fee would

be placed in the City's General Fund and then the City Council would decide how the funds are allocated. The Fire Department would not have any control over how the funds would be used. The City Council would decide whether any funds would be allocated to the Fire Department.

The funds generated from the Transfer Program would be combined with other funds collected from billing through Medicare and private insurance and would be deposited into an enterprise account operated by the City of Fairfield as the manager of the program for the collective benefit of the JEPA members. These funds would be used to pay for the following:

- Ambulance Subcontractor
- Agreements for ambulance services
- Operating/Risk Reserve Funds
- Administrative Fee
- Investing in the County Emergency Medical Services System

Any funds distributed from the JEPA enterprise funds to member agencies would be transmitted to those member cities for deposit into the member's general fund, and each member agency would make a discretionary decision whether those funds are allocated for use by the member's fire departments or used for other purposes. The payments to the cities will be for the first responder paramedic services, and currently there are no fire protection districts that provide the paramedic services. If the fire protection districts ever do, funds would be transmitted to the member fire protection districts that provide paramedic services. As with the city members, such funds would be deposited into the member fire protection district's designated fund, and each member fire protection district would make a discretionary decision on how those funds are allocated.

The City of Fairfield would not control how those member agencies would use those funds and would not require those funds to be allocated to the member agencies' fire departments. The same would apply to any enterprise funds paid out to the City of Fairfield. Those funds would go to the City's General Fund and then the City Council would decide how to allocate and spend those funds.

## ANALYSIS

### *Section 1090*

In this instance, the City Manager representative and the Fairfield Fire Chief representative on the SEMSC Board are public officers subject to the provisions of Section 1090. Additionally, as members of the governing board of SEMSC, they are presumed to be involved in the making of all contracts by the board irrespective of whether they actually participate in the making of the contract. (*Thomson v. Call* (1985) 38 Cal.3d 633, 645, 649.)

Generally, a "financial interest" is broadly defined for purposes of Section 1090 and includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. In determining whether a financial interest exists for purposes of Section 1090, courts "generally focus on whether the contract in question could confer some type of

pecuniary advantage to the target of a Section 1090 inquiry.” (*Eden Township Healthcare District v. Sutter Health* (2011) 202 Cal.App.4th 208, 225.)

*City Manager Representative and Fire Chief Representative*

The City of Fairfield will administer the agreement with SEMSC, invoice for all ambulance services, pay the subcontractor, and remit the excess revenue received under the Transfer Program to those member cities for deposit into the member’s general fund, and each member agency would make a discretionary decision whether those funds are allocated for use by the member’s fire departments or used for other purposes.

In order to determine whether the City Manager representative and Fairfield Fire Chief representative have financial interests in the agreement, it is appropriate to look to the definitions of the remote and noninterest exceptions contained in Sections 1091 and 1091.5 for guidance in determining what falls within the scope of the term “financial interest” as used in Section 1090. (See 85 Ops.Cal.Atty.Gen. 34, 36 (2002).) In this regard, the Legislature has created various statutory exceptions to Section 1090’s prohibition where the financial interest involved is deemed to be a “remote interest,” as defined in Section 1091, or a “noninterest,” as defined in Section 1091.5.

Relevant here is Section 1091.5(a)(9), which provides that an officer or employee shall not be deemed to be interested in a contract where the officer’s interest is “[t]hat of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.” In *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1081, the California Supreme Court determined that this exception applies when “the contract involves no direct financial gain, does not directly affect the official’s employing department, and is only with the general government entity for which the official works.” Thus, an official or employee has a noninterest in the government-entity employer under Section 1091.5(a)(9), provided that: (1) the contract at issue involves no direct financial gain to the official or employee, (2) the contract does not directly affect the official’s or employee’s department, (3) the interest is disclosed to the body or board at the time the contract is considered, and (4) the interest is noted in the body or board’s official record.

Here, SEMSC would enter into a contract with the City of Fairfield, whereby the City would subcontract directly with a private ambulance service provider and be responsible for managing the day-to-day ambulance operations. There is no suggestion from the facts that the contracts at issue involve direct financial gain to the City Manager representative or Fairfield Fire Chief representative. The contract also does not directly involve a department that employs either official and is only with the general government entity for which the official works. Under these circumstances, we do not find that either the City Manager representative or Fairfield Fire Chief representative has a financial interest in the contract merely as the result of receipt of a government salary from their respective jurisdictions. Accordingly, so long as the officials’ interests are disclosed to the SEMSC Board at the time the subject contract is considered and that interest is noted in the Board’s official record, Section 1090 does not prohibit the City Manager representative or Fairfield Fire Chief representative from taking part in decisions concerning the contract based on the facts provided.

*Fire Chief Representatives from Other Jurisdictions - SEMSC Board and JEPA Executive Committee*

As stated above, the remote interest exception under Section 1091.5(a)(9) applies provided that: (1) the contract at issue involves no direct financial gain to the official or employee, (2) the contract does not directly affect the official's or employee's department, (3) the interest is disclosed to the body or board at the time the contract is considered, and (4) the interest is noted in the body or board's official record. Based on the facts provided, any funds distributed from the JEPA enterprise funds to member agencies would be transmitted to those member cities for deposit into the member's general fund, and each member agency would make a discretionary decision whether those funds are allocated for use by the member's fire departments or used for other purpose. Like the City Manager and Fire Chief Representatives analyzed above, the decisions involving the contracts identified do not have a direct financial gain on the fire chief representatives from other jurisdictions and do not directly involve their respective departments. Accordingly, fire chiefs from other jurisdictions who may be involved in the RFP process, the contract between SEMSC and the City of Fairfield, or as JEPA Executive Committee members in administering the contract will have a noninterest in these decisions, and they may participate in the decisions provided they disclose their interest in the contract to the board and the interest is noted in the board's records.<sup>2</sup>

*The Act*

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official's position to influence a governmental decision in which the official knows or has reason to know the official 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 the official's immediate family," or on certain specified economic interests. (Section 87103.)

Among a public official's potentially relevant economic 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." (Section 87103(c).) However, under the Act, the term "income" does not include "[s]alary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency." (Section 82030(b)(2).) Consequently, lacking any facts indicating any of the above-referenced decisions would impact any of the City Manager Representative's or Fairfield Fire Chief Representative's other economic interests, they would not have a disqualifying financial interest under the Act. This is also the case for fire chief's representatives from other jurisdictions.

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<sup>2</sup> You state that currently, there are no fire protection districts that provide paramedic services. In the event that fire protection districts do provide paramedic services in the future, you should seek further advice to the extent that fire chiefs from these districts may participate in any decisions that would result in funds being transmitted to the member fire protection districts.

If you have other questions on this matter, please contact me by email at  
znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

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