



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 27, 2025

Marco A. Verdugo,
City Attorney
City of Chula Vista
276 Fourth Avenue, Chula Vista, CA 91910

Re: Your Request for Advice
Our File No. A-24-066

Dear Mr. Verdugo:

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.

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 Diego 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).)

QUESTIONS

1. Under the Act and Section 1090, may City of Chula Vista Councilmember Rachel Morineau participate in decisions surrounding contracts between the City and SBCS, a non-profit organization and her former employer?
2. If Councilmember Morineau were to be re-employed by SBCS may the City Council approve a contract with SBCS if she recuses herself from participation in the decision?

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.

CONCLUSIONS

1. So long as Councilmember Morineau is no longer employed by SBCS and has had no discussions with SBCS regarding her future employment, the councilmember does not have a financial interest in a contract between SBCS and the City for purposes of Section 1090. However, under the Act, she may not take part in any decisions regarding a contract with SBCS at this time because she has received income from SBCS within the previous 12 months. Accordingly, she has an economic interest in SBCS and under applicable regulations is prohibited from taking part in any decision explicitly involving SBCS such as a contract between the SBCS and the City.²

2. Should Councilmember Morineau return to employment with SBCS or enter any discussion to return to employment with SBCS, we must generally advise that the councilmember would have a financial interest in any contract between SBCS and the City and would not be able to participate in decisions regarding the contract.³ However, because SBCS is a nonprofit organization her interest would be remote and the City would still be permitted to enter the contracts so long as the Councilmember recused herself accordingly. Again, the Act prohibits the Councilmember from taking part in these decisions and in addition to Section 1090's recusal requirements she would also be required to leave to room to comply with the Act's requirements.

FACTS AS PRESENTED BY REQUESTER

Councilmember Morineau took office on April 9, 2024, filling the seat of a City Councilmember who resigned for the remainder of that Councilmember's four-year term until December 2024. Councilmember Morineau was employed as a Community Engagement Director by SBCS Corporation ("SBCS") from February 2005 until April 23, 2024, when she left her employment. SBCS is a 501(c)(3) non-profit organization providing services to low income and disadvantaged populations. It provides domestic violence, housing, and transitional youth services; parent and leadership building; food distribution; and other services.

The City receives grant funds from various sources to provide services and programs to underserved residents in need in the community. The City often contracts with outside service providers to provide such services and programs, as the City does not have sufficient internal staff to do so. Service provider contracts identify the programs or services to be provided, the amount of funding provided by the City to SBCS for such programs or services, the term of the contract for services, and any rules, regulations, and reporting requirements associated with such funds, services, and programs. For many years, the City has contracted with SBCS to provide services to

² We note that an official has an economic interest in a source of income under the Act only to the extent the official has received income from the source in the 12 months prior to the decisions. Provided she has no other interest in SBCS, does not return to employment for SBCS, and does not engage in any discussions regarding future employment with SBCS, the Act would not generally prohibit Councilmember Morineau from taking part in a decision implicating SBCS that occurs after April 23, 2025.

³ The application of Section 1090 is specific to the factual circumstances of the contract. Accordingly, if Councilmember Morineau needs assistance with the determination of whether she has an interest in any particular contract, she should seek additional advice identifying the contract and her potential interest in the contract including, but not limited, a description of any discussions she has had with SBCS regarding her returning to employment.

Chula Vista residents. For fiscal year 2023-2024, the City is providing funding to SBCS for approximately ten programs in a total amount over 2.4 million dollars.

Currently, there are multiple service contracts between the City and SBCS, which includes contracts and funding for Youth Counseling, Tenant-Based Rental Assistance, South Bay Food Program, Homeless Services, Family Violence Support Services, Casa Nueva Vida, Domestic Violence Support Response Team, Lauderbach Kitchen Renovation, and Rental Arrears. Additionally, the City has entered into an agreement with SBCS for the use of City property for SBCS office space and programs.

The City Council expects to have decisions surrounding amendments to the terms of existing contracts with SBCS, new services provider contracts with SBCS for the 2024-2025 fiscal year, and amendments to the term of an agreement with SBCS for use of City property before it in the near future.

ANALYSIS

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.

Economic interests from which a conflict of interest may arise are defined in Section 87103 and Regulations 18703-18703.5 and include:

- An economic interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)

Here, Councilmember Morineau has an economic interest in SBCS as a source of income within the past 12 months.

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. (Regulation 18702.3(a)(1).) As these rules relate to source of income interests, an interest in a source of income is material if the source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party. (Regulation 18702.3(a)(1).)

Councilmember Morineau has an economic interest in SBCS as a source of income within the last 12 months. If SBCS were to be named in a contract in a decision before City Council then SBCS would be explicitly involved in the decision before City Council as a named party and

therefore it is reasonably foreseeable the financial effect on the Councilmember's interest in SBCS will be material under the applicable regulations. As such, Councilmember Morineau is disqualified from taking part in any decision involving the contract with SBCS so long as the Councilmember received income of \$500 or more in the 12 months prior to the decision. To properly recuse herself from the decision under the Act, Councilmember Morineau must follow the recusal requirements under Regulation 18707 and publicly identify her interest that gives rise to the conflict then leave the room while the decision is made

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. 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.) 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.) 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.)

Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Honig, supra*, at p. 333.) Although 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. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn.5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) In addition, case law and statutory exceptions to Section 1090 make clear that the term "financially interested" must be liberally interpreted. (See, e.g., *People v. Deysher* (1934) 2 Cal.2d 141, 146.) Further, "the certainty of financial gain is not necessary to create a conflict of interest... (t)he government's right to the absolute, undivided allegiance of a public officer is diminished as effectively where the officer acts with a hope of personal financial gain as where he acts with certainty." (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1298 (citations omitted).)

Generally, employees have been found to have a financial interest in a contract that involves their employer, even where the contract would not result in a change in income or directly involve the employee, because an employee has an overall interest in the financial success of the firm and continued employment. (84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Here, because Councilmember Morineau is no longer employed with SBCS she does not have a financial interest in a contract between the company and the City so long as she has not have any discussion with SBCS regarding returning to employment. Accordingly, under these circumstances, Section 1090 would not generally prohibit the Councilmember Morineau from participating in the making of any contract with SBCS or the City from entering the contract because Councilmember Morineau does not have a financial interest in a contract with a former

employer. Although, we caution that Councilmember Morineau will be disqualified from taking part in the contract decisions under the Act as analyzed above.

However, our analysis does not end here because you have also asked how Section 1090 applies should Councilmember Morineau return to employment with SBCS or enter into discussions with SBCS for employment. As stated above, employees have been found to have an interest in contracts involving their employer. Accordingly, if Councilmember Morineau returns to employment with SBCS she would generally have a financial interest in any contract between SBCS and the City and under Section 1090 she may not participate in the decisions regarding the contract.

Should Councilmember enter discussions with SBCS regarding future employment, we caution that Section 1090 must be liberally interpreted and officials must avoid participating in a contract where they *might* benefit in *any* way. If Councilmember Morineau is discussing future employment with SBCS, it is possible that the councilmember may benefit in the negotiations and future employment should the City enter a contract with SBCS. Accordingly, based upon the facts provided, we can only conservatively and generally advise that the councilmember will have a financial interest in any contract involving SBCS if the councilmember has had any discussions regarding future employment with SBCS. Under these circumstances, the councilmember is also prohibited from taking part in the decisions regarding the contract.

Accordingly, Councilmember Morineau would have a financial interest in any contract between SBCS and the City and she would not be able to participate in decisions regarding the contract should she return to employment with SBCS or enter any discussions to return to employment with SBCS.

Turning to the additional question as to whether the City may enter a contract with SBCS should the councilmember be prohibited from taking part under Section 1090, Section 1090 also prohibits a decisionmaking body from entering a contract if a member of the body has a financial interest in the contract unless an exception applies. (*Thomson v. Call* (1985) 38 Cal.3d 633, 647-649.)

The Legislature has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a remote interest is present, the contract may be made by the agency provided: (1) the officer discloses his or her financial interest in the contract to the public body; (2) the interest is noted in the body's official records, and; (3) the officer abstains from participating in the making of the contract. (Section 1091(a).)

Section 1091(b)(1) sets forth a remote interest exception and provides in pertinent part as follows:

(b) As used in this article, "remote interest" means any of the following: ...

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation.

If Councilmember Morineau seeks or accepts employment with SBCS in the future and is prohibited from participating in decisions regarding contracts between the City and SBCS, because SBCS is a nonprofit organization her interest would be remote and the City would still be permitted to enter contracts with SBCS as long as the Councilmember properly recuses herself. Under Section 1091, Councilmember Morineau would be required to disclose the conflict to City Council, note the conflict in the official records, and abstain from the decision. If the decision requires recusal under the Act, as noted above, the Councilmember would need to leave the room in addition to the requirements under Section 1091.⁴

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

Sincerely,

Dave Bainbridge
General Counsel



for

By: Valerie Nuding
Counsel, Legal Division

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⁴ We note that while the immediate conflict before the Councilmember under the Act is receiving income from SBCS within 12 months, the Act also prohibits taking part in a decision if the decision relates directly to a prospective employer. A person is a “prospective employer” of a public official if the official, either personally or through an agent, is “negotiating” or has an “arrangement” concerning prospective employment with that person. (See Section 87407 and Regulation 18747.) We do not further address the ban on influencing a decision involving a prospective employer under the Act because it is unnecessary considering the conclusion that the Councilmember must abstain from the identified decisions under Section 1090 if the Councilmember enters discussions to return to employment. However, we caution that the Act may prohibit the Councilmember from other government decisions that may financially effect SBCS, in addition to the decisions identified, should the Councilmember enter discussions with SBCS for prospective employment.