



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 7, 2025

Lauren D. Layne
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Fig Garden Financial Center
5260 N. Palm Avenue, Suite 201
Fresno, CA 93704

Re: Your Request for Advice
Our File No. A-25-002

Dear Ms. Layne:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹ 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.

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 Tulare 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

Do you have a conflict of interest under the Act or Section 1090 that would prohibit you from serving as general counsel to a yet-to-be-created New Groundwater Sustainability Agency (“New GSA”), given your interest in Corkins Farming, a business located within the proposed agency’s jurisdiction, and your involvement in tentative discussions regarding the formation of the New GSA? Would you have a conflict of interest in any New GSA decision which materially affects the Corkins Farming?

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

To the extent that you and your law firm will neither have duties to engage in or advise on public contracting on behalf of the New GSA nor, in fact, engage in such conduct, you are not acting as an independent contractor on behalf of a public entity, and Section 1090 will not prohibit the New GSA from contracting with your law firm to serve as general counsel. A conflict of interest under the Act arises only with respect to a specific governmental decision. There is no general conflict of interest under the Act arising out of serving as general counsel to the New GSA. As you are currently acting in your private capacity and representing private parties in assisting the County of Tulare with establishing a New GSA, you are not a “public official” for purposes of the Act. Should the New GSA hire you or your firm as general counsel, we caution that you are prohibited as a public official from taking part in any decision if it is reasonably foreseeable the decision will have a material financial effect on any of interest you may have, and you may wish to seek further advice when a specific decision and factual circumstances of the decision have been identified.²

FACTS AS PRESENTED BY REQUESTER

The Eastern Tule Groundwater Sustainability Agency (“ETGSA”) is a groundwater sustainability agency (“GSA”) formed pursuant to the Sustainable Groundwater Management Act of 2014 (“SGMA”) to manage groundwater in identified boundaries within the Tule groundwater subbasin (the “Tule Subbasin”). Under SGMA, “any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin.” A combination of local agencies can form a GSA by using a joint powers agreement, a memorandum of agreement, or other legal agreement. The applicable county is presumed to be the GSA for “White Areas” (generally, those areas not otherwise covered by a local agency), unless the county notifies the California Department of Water Resources (“DWR”) otherwise.

The ETGSA operates under an agreement to form a joint powers authority. Its original member entities were the County of Tulare, the City of Porterville, Porterville Irrigation District, Saucelito Irrigation District, Teapot Dome Water District, Vandalia Water District, Terra Bella Irrigation District, and Kern-Tulare Water District. Due to various internal and external pressures stemming from SOMA implementation and the State Water Resources Control Board’s designation of the Tule Subbasin as “probationary,”³ many of the member agencies of the ETGSA are leaving the ETGSA to form separate GSAs. It is likely that the ETGSA will ultimately dissolve.

In response, your office is working with counsel from Tulare County and other local districts to potentially form a new GSA (to be formed by a joint powers agreement) with the County

² You have also asked whether the New GSA may approve an engagement agreement with your law firm, despite your business interest in Corkins Farming, if John Corkins is on the New GSA’s Board of Directors. We decline to provide formal advice in response to this question because it is hypothetical and overly broad. (Regulation 18329(b)(6)(F).) However, we note that a family relationship may require recusal under the common-law doctrine against conflicts of interest, a doctrine that is beyond the Commission’s purview. The New GSA may wish to seek further advice should John Corkins become a board member prior to entering an agreement with you or your firm.

³ After DWR determines that a critically overdrafted subbasin does not have an adequate GSP (or coordinated GSP) the Water Board can designate, after notice and a public hearing, a basin as probationary, which designation allows the Water Board to impose certain fees and requirements on groundwater extractors within the basin.

of Tulare, Hope Water District, and Ducor Water District (the “New GSA”), so that the remaining White Area lands within the former boundaries of ETGSA, in the Tule Subbasin in Tulare County, will have a GSA that covers them pursuant to SGMA. The New GSA would consist of approximately 82,000 acres.

In a follow-up email, you explained that you currently represent a private association known as the Eastern Tule White Area Growers (“ETWAG”). This group stays apprised of what is going on in ETGSA, but is not affiliated with the ETGSA. With several members leaving and the potential dissolution of the ETGSA in the future due to the State Water Resources Control Board’s probationary designation, the ETWAG members are concerned that they would be left without a GSA, as they are not within any irrigation or water district. As such, Tulare County would have to opt to cover them for the purposes of the SGMA. With this in mind, you have had a couple of discussions with legal counsel for Tulare County and ETGSA to brainstorm how to maintain GSA coverage under SGMA for landowners in Tulare County, who are not within a district. These discussions led to the idea of forming the new GSA, through a joint powers agreement, as discussed above.

The New GSA would be responsible for implementing SGMA within its jurisdictional boundaries, which actions may include the following as a non-exclusive list:

1. Developing, adopting, amending, and revising a groundwater sustainability plan (“GSP”) for its portion of the Tule Subbasin, in coordination with other GSAs in the Tule Subbasin;
2. Implementing groundwater allocations;
3. Imposing fees on the extraction of groundwater;
4. Requiring well metering and/or registration;
5. Adopting fees, assessments, rates, and/or charges applicable to agricultural land after meeting constitutional requirements;
6. Imposing fees or penalties for the violation of any rules; and/or
7. Entering into agreements with landowners for groundwater recharge projects or other GSA projects or management actions.

The potential members of the New GSA discussed retaining your firm as general counsel for the New GSA. However, you have an interest in a business that owns property located within the jurisdiction of the New GSA. You are the Vice President of, and own a minority interest of 3.6 percent in, Corkins Farming, Inc., a California corporation. Further, you are the custodian of your two children’s minority interests in Corkins Farming, consisting of a combined 2.6 percent interest (1.3 percent each). Additionally, your father, John Corkins, currently sits on the ETGSA Board of Directors and may apply to sit on the New GSA Board of Directors. John Corkins is the President of Corkins Farming and owns 90.2 percent of the company. However, you are not a dependent of your father, and he is not your dependent. Corkins Farming owns 144.47 acres in total in the Tule Subbasin; however, only approximately 116.47 acres of that land would be located in

the New GSA. Corkins Farming uses groundwater to irrigate crops and to provide domestic water supplies on the real property it owns.

Corkins Farming is not your primary source of income. Your primary income is through being a Shareholder at Baker Manock & Jensen, PC, and your husband's income through Knight Material Technologies. Your interest in Baker Manock & Jensen is less than 10 percent, and your husband is an employee, not an owner, of Knight Material Technologies.

ANALYSIS

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.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103Cal.App.3d 191, 197.)

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. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Importantly, Section 1090 prohibits self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124 [independent contractor leveraged his public position for access to city officials and influenced them for his pecuniary benefit]; *California Housing Finance Agency v. Hanover* (2007) 148 Cal.App.4th 682, 690 [“Section 1090 places responsibility for acts of self-dealing on the public servant where he or she exercises sufficient control over the public entity, i.e., where the agent is in a position to contract in his or her official capacity”]; *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090 [The purpose of Section 1090 is to prohibit self-dealing, not representation of the interests of others].)

For purposes of Section 1090, participation in the making of a contract is defined broadly to include preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitations for bids. (*Millbrae Association for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.)

Although Section 1090 refers to “officers or employees” of government entities, the California Supreme Court has recognized “the Legislature did not intend to categorically exclude independent contractors from the scope of section 1090.” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 238.) However, Section 1090 does not apply to all independent contractors - *only* those who are “entrusted with ‘transact[ing] on behalf of the Government’” (*Id.* at p. 240, italics added, quoting *Stigall, supra*, 58 Cal.2d at p. 570.)

The Section 1090 prohibition also applies to persons in advisory positions to contracting agencies. (*Schaefer v. Berinstein* (1956)140 Cal.App.2d 278; *City Council v. McKinley* (1978) 80 Cal.App.3d 204.) This is because such individuals can influence the development of a contract during preliminary discussions, negotiations, etc., even though they have no actual power to execute the final contract. However, because advisory boards do not actually enter into contracts, members with a financial interest in a contract may avoid a conflict by disqualifying themselves from any participation in connection with the contract. (82 Ops.Cal.Atty.Gen. 126 (1999).)

Section 1090, however, does not apply to a public officer who makes or participates in the making of the contract at issue solely in the officer's private capacity. (*County of Marin v. Dufficy* (1956) 144 Cal.App.2d 30, 37; 88 Ops.Cal.Atty.Gen. 56 (2005); 80 Ops.Cal.Atty.Gen. 41 (1997); 63 Ops.Cal.Atty.Gen. 19 (1980); 53 Ops.Cal.Atty.Gen. 163 (1970).)

You state that you currently represent a private association, ETWAG, that is not affiliated with the ETGSA. You state that, as a representative of this private association, you have engaged in discussions with legal counsel for Tulare County and the ETGSA to brainstorm how to maintain GSA coverage under SGMA for landowners in Tulare County, given the likelihood that the ETGSA will ultimately dissolve. Based on the facts provided, you are representing a private association in these discussions, not acting as an independent contractor on behalf of any public entity. Therefore, in any subsequent negotiations between the New GSA and you would be acting as a private attorney engaged in an arm's-length transaction with a prospective public agency client, and Section 1090 would not prohibit you from contracting with the New GSA in your private capacity to serve as outside general counsel.

The Act

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more or in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more (Section 87103(b)), including a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater (Section 82033).
- Any 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.

The Act's definition of an "indirect investment" includes any investment or interest owned by the public official's spouse. (Section 87103.) "Income" includes any community property interest in a spouse's income. (Section 82030(a).) Additionally, under Section 82030, "income" to an official "also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater."

You have identified that you have various interests, including but not limited to a business entity interest and source of income interest in Corkins Farming, and source of income interests in your law firm, Baker Manock & Jensen, PC, and your husband's employer Knight Material Technologies.

However, a conflict of interest under the Act arises only with respect to a specific governmental decision and there is no general conflict of interest under the Act arising out of serving as general counsel to the New GSA. Moreover, the Act applies only to public officials, which are defined as every member, officer, employee, or consultant of a state or local government agency. (Section 82048.) Based upon the facts provided you are currently acting in your private capacity and in representation of private parties in assisting the County of Tulare with establishing a New GSA. You are not acting on behalf of the New GSA, or any other government agency. Accordingly, you are not currently a public official, and there is no violation of the Act in negotiating your employment with the New GSA.

Notwithstanding our conclusions under Section 1090 and the Act, we caution that the New GSA should seek additional advice if John Corkins becomes a board member prior to the New GSA entering an agreement with you or your firm. We also caution that should you enter an agreement to serve as the general counsel for the New GSA, you will become a public official, and the Act prohibits you from taking part in any decision as a public official if it is reasonably foreseeable the decision will have a material financial effect on any interest you may have including but not limited to those interests identified above.

If you have other questions on this matter, please contact me 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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