



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 4, 2025

Jennifer V. Gore  
Senior Deputy City Attorney  
City of Sacramento  
915 I Street  
Fourth Floor Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-25-010**

Dear Ms. Gore:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> 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 Sacramento 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 the Act or Section 1090 prohibit four City of Sacramento employees from participating in decisions involving the recipients of City grants given the potential recipients include nonprofit organizations and various City of Sacramento departments?

### CONCLUSION

No. Under the Act, there is no indication from the facts provided of a reasonably foreseeable financial effect on any interest identified in Section 87103 resulting from a grant decision involving

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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.

a nonprofit that the employees do not receive income from or another department of the City. In addition, there is nothing that would constitute a financial interest in a contract under Section 1090 where the City employees are merely working on potential grants to nonprofits the employees have no relationship with, or grants to other departments within the City.

### **FACTS AS PRESENTED BY REQUESTER**

You seek this advice on behalf of the City of Sacramento regarding application of the Act and Section 1090 to City employees who will score grant funding applications, including applications submitted by various departments of the City.

As directed by the City's charter, the City maintains the "Sacramento Children's Fund" ("SCF"), the proceeds of which must be used to fund youth services provided by public agencies and 501(c)(3) nonprofit corporations operating in the City of Sacramento. (Sac. City Charter, § 120, subd. (a)(12).)

The City Charter provides that SCF funding can only be awarded pursuant to an open, transparent, competitive process. (Sac. City Charter, § 120, subd. (d)(3)(A).) The first round of applications for SCF funding were submitted to the City on December 6, 2024. More than 120 grant funding applications were received, including several applications submitted by various City departments. The City Charter authorizes the City to apply for SCF funding. (Sac. City Charter, § 120, subd. (a)(12).)

The City is working to establish a panel of qualified individuals who will review and score the grant funding applications based on the scoring criteria published in the City's Request for Proposals. The potential panelists include a diverse group of individuals from the community, as well as several City employees. While the panelists will not directly award grant funding, the panelists' scores will be compiled and utilized by the City Council to determine which applicants will be awarded grant funding.

In a follow-up email of March 14, 2025, you stated the City employees who would participate in the SCF application review panel are David Augusto, Janine Cooper, Aimee Barnes and Larissa Wohl. In addition, you confirmed that none of the four City-employee panelists, nor their immediate family members, is employed by or serves on the board of a nonprofit, or works for a department of the City, that submitted an application.

### **ANALYSIS**

#### **The Act**

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests, distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) Interests that are potentially disqualifying are enumerated in Section 87103 and include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a

director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

- 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).
- An interest in a source of income to the official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c)) including any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest (Section 82030(a)).
- An interest in a donor of, or an intermediary or agent for a donor of, a gift or gifts aggregating \$630 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(e); Regulation 18700(c)(6)(E).)
- Personal finances, meaning the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family. (Section 87100; Regulation 18700(c)(6).)

Based on the facts provided, you have provided no indication of a reasonably foreseeable financial effect on an interest identified in Section 87103 resulting from a grant decision involving a nonprofit the official does not receive income from or another department of the City.

More specifically, you have sought advice regarding any potential effect of the grant decisions as paid employees of the City. While there are no apparent indications it is reasonably foreseeable these decisions would affect the employees' wages, we note that the Act's definition of "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).) Therefore, income received from the City would not implicate a potentially disqualifying source of income, and the officials are not prohibited from taking part in future decisions concerning the aforementioned grant funds so long as the employee does not have any other interest enumerated in Section 87103.

## **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 any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of" their respective agencies. (*Stigall v. 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) 103 Cal.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, 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.)

All four City employees are public officers subject to the provisions of Section 1090, and all will be considered to have participated in the making of City contracts through their participation in reviewing and scoring the grant funding applications submitted by various City departments and nonprofits.<sup>2</sup> Therefore, the determinative question is whether any of the four City employees has a financial interest in those grant decisions.

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).) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) 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, supra* at p. 569.)

Here, there is nothing about working on potential grants to nonprofits the employees have no relationship with, or grants to another department within the City, that would constitute a financial interest in the contract for purposes of Section 1090. Therefore, barring any other interest in the contract, the fact that the employees are working on the grants on behalf of their City employer and receive a salary from their City employer, without more, does not result in a Section 1090 violation.

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<sup>2</sup> Note that for purposes of Section 1090, participation in the making of a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitations for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.) In addition, grant agreements are generally considered contracts for purposes of Section 1090. (See, e.g., *People v. Honig, supra*, at p. 350; 89 and Ops.Cal.Atty.Gen. 258, 260-262 (2006).)

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

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

JW:aja