



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

June 5, 2026

Olivia Clark
Best, Best & Krieger LLP
500 Capitol Mall, Suite 2500
Sacramento, California 95814

Re: Your Request for Informal Assistance
Our File No. I-26-048

Dear Ms. Clark:

This letter responds to your request for advice on behalf of David Diamond, President of the Board of Directors (“Board”) for the Truckee-Tahoe Airport District (“District”), regarding the conflict of interest provisions of 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.

Because the questions presented are general in nature and no specific decision or contract has been identified at this time, we are treating your request as one for informal assistance.² 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 Nevada 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

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.

² Informal assistance does not provide the requestor with immunity provided by an opinion or formal written advice (Section 83114; Regulation 18329(c)(3).)

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 Board President Diamond take part in discussions and decisions related to a request for proposal involving a contract for the development of a parcel of District land, given that the Town of Truckee (“Town”) may submit a proposal for the contract and Board President Diamond is an independent contractor for the Town?

CONCLUSION

The facts do not identify any decisions before the District Board to determine whether Board President Diamond is disqualified from taking part in a particular decision under the Act. However, we can generally advise that to the extent that the only interest affected by the decision is Board President Diamond’s interest in the Town, a government entity, as a source of income, he is only disqualified from taking part in decisions under Regulation 18703(e)(7) if the decisions result in a unique effect on Board President Diamond. Nonetheless, whether Board President Diamond is permitted to take part in any particular decision before the District’s Board is a factual determination that can only be made once the decision can be identified.³

As to Section 1090, you have not identified decisions involving a particular contract with the District and we cannot provide specific advice regarding Section 1090 at this time. Generally, Section 1090 prohibits Board President Diamond, as well as the District, from entering into a contract in which the Board President has a financial interest unless an exception applies. We note that the Commission has determined that an independent contractor for a government entity is within the scope of the exceptions provided for in Sections 1091(b)(13) and 1091.5(a)(9). As a result, Section 1090 does not generally prohibit a contract between two government entities where an official serves as a board member for one entity and is employed by the other entity as an independent contractor.

FACTS AS PRESENTED BY REQUESTER

The District owns a parcel of land near the Airport and wants to put it to use. The District anticipates requesting proposals for developing the property. It will be a competitive process that

³ Under the Act, in addition to the prohibition that an official may not make, participate in making, or use their official position to influence a decision as described below, an official with a disqualifying financial interest must recuse following the procedure outlined in Regulation 18707, which also requires the official to announce the interest and leave the room during the discussion and vote.

may result in the sale or lease of the parcel. The Town may submit a proposal to the District to develop this parcel.

David Diamond serves as President of the Board for the District. Additionally, Board President Diamond is an independent contractor for the Town and has a 100% ownership interest in his independent contracting business. Specifically, he does communications, process analysis, technology development, and further outreach for the Town. Board President Diamond is not involved in development, land use, or other property-related decisions for the Town; and he will not have a role in determining if the Town will bid or how. Board President Diamond's contract with the Town is set to expire later this year but will likely be renewed for an extended term.

ANALYSIS

The Act

Section 87100 of the Act prohibits a public official from making, participating in making, or in any way attempting to use the official's position to influence a government decision in which the official has a financial interest.

A public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. The official is also prohibited from making, participating in making, or in any way attempting to use their official position to influence the governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Regulation 18704 defines "making, participating in making, and attempting to use their position to influence" a governmental decision as follows:

- *Making a Decision:* A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency. (Regulation 18704(a).)
- *Participating in a Decision:* A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).)
- *Using Official Position to Attempt to Influence a Decision.* A public official uses an official position to influence a governmental decision if the official: contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision; or contacts or appears before any official in any other government agency for the purpose of

affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact. (Regulation 18704(c)(1)-(2).)

Financial Interests

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 an interest specified in Section 87103, including:

- Any business entity⁴ in which the public official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)) and any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Section 87103(b).)
- Any source of income aggregating \$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).)
- Any donor of, or any 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) and Regulation 18940.2.)
- An interest in the official's personal finances and those of the official's immediate family. (Section 87103.)

Section 82030 provides that income of an individual 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. Because Board President Diamond has a greater than 10 percent interest in his independent contracting business and conducts his business through his independent contracting business, he has a source of income financial interest in any client of the business from whom he receives \$500 or more in income.

⁴ The Act defines "business entity" to mean any organization or enterprise operated for profit. (Section 82005.)

Based on facts presented, Board President Diamond receives income from the Town through his business for providing certain services. As such, Board President Diamond has a financial interest in his business, and a source of income financial interest in the Town as a client of his business.⁵ Additionally, Board President Diamond has an interest in his personal finances.⁶

Foreseeability and Materiality

For a conflict of interest to exist, it must be reasonably foreseeable that the governmental decision would have a material financial effect⁷ on the public official's financial interests. (Regulation 18700(d)(1)-(2).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on a financial interest explicitly involved in a governmental decision. It states:

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

As noted above, Board President Diamond has a source of income financial interest in the Town which may submit a proposal for developing the District's parcel. If the Town is a party to a contract with the District, the Town will be explicitly involved in the decision and there is a presumption that the financial effect on the Town is reasonably foreseeable. Board President Diamond's financial interest in his independent contracting business is not explicitly involved in the decision.

⁵ For purposes of the Act, 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).) However, Section 82030(b)(2) applies only to salary received by employees, not independent contractors. (*Rainey* Advice Letter, No. A-98-101; *Riddle* Advice Letter, No. A-97-294, and *Soldani* Advice Letter, No. A-94-042.)

⁶ If the decision would have a reasonably foreseeable financial effect on the official's financial interest in a business entity, any related effect on the official's personal finances is not considered separately. (Regulation 18702.5(c).)

⁷ "Financial effect" means an effect that provides a benefit of monetary value or provides, prevents, or avoids a detriment of monetary value. (Regulation 18700(c)(5).)

Where an official's financial interest is not explicitly involved in a decision the applicable standard for determining the foreseeability of a financial effect on a financial interest is found in Regulation 18701(b) which provides:

A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.

Financial Interest in Business Entity and Source of Income

Regulation 18702.3(a)(1) provides that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a source of income is material if the source is a named part in, or the subject of, the decision including an applicant or contracting party. However, where a government entity qualifies as a source of income as defined in Section 82030, including where a public official is paid by the entity as a consultant or contractor, Regulation 18702.3 does not apply. (Regulation 18702.3(d).) Under Regulation 18703(e)(7), an official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on the official. (*Id.*) A "unique effect" is defined in Regulation 18703(c) and includes, relevant to these facts, a disproportionate effect on:

- The income producing potential of the official's business entity. (Regulation 18703(c)(1).)
- The official's personal finances. (Regulation 18703(c)(6).)

Here, a potential contract between the District and the Town regarding developing the District's parcel does not appear to have a unique effect on Board President Diamond. You state Board President Diamond receives income to provide certain services to the Town, including communications, process analysis, technology development, and further outreach for the Town. You confirmed Board President Diamond is not involved in development, land use, or other property-related decisions for the Town and he will not have a role in determining if or how the Town will bid on the proposal for developing the District's parcel. Because these facts indicate the decision is unrelated to and will have no impact on Board President Diamond's independent contracting business or his personal finances, we find it is not reasonably foreseeable that there would be a unique effect on his financial interests.

While you have not identified an actual decision before the District's Board, it appears the Act would not prohibit Board President Diamond from taking part in decisions involving proposals for developing the District's parcel, where one of the proposals may be submitted by

his source of income financial interest, the Town, provided the decision will not have any financial effect on any other interest he may have including but not limited to his independent contracting business.

Section 1090

Section 1090 generally prohibits public officials, 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 in furthering the best interests of” their respective agencies. (*Stigall v. 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.)

As a general rule, 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 649.) Notably, when members of a public board, commission, or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by their agency regardless of whether the member actually participates in the making of the contract. (*Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 211-212; 89 Ops.Cal.Atty.Gen. 49 (2006).) Note that 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 solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.)

We can provide specific advice related to Section 1090 only if an actual contract is identified along with the factual circumstances pertaining to the decisions related to the contract. Generally, we can advise that Section 1090 prohibits Board President Diamond, as well as the District, from entering a contract in which the Board President has a financial interest unless an exception applies.

The Legislature has created various statutory exceptions to the Section 1090 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. If a remote interest is present, the contract may be made if: (1) the officer discloses the interest in the contract to their public agency; (2) that interest is noted in the agency’s official records; and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a).) If a noninterest is present, the contract may be made without the officer’s abstention, and a noninterest generally does not

require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

While we cannot determine whether an exception applies until an actual contract is identified, we note that the exception under Section 1091(b)(13) provides that an agency board member who receives salary, per diem, or reimbursement for expenses from another government entity has a remote interest in a contract between the two agencies. Additionally, the exception under Section 1091.5(a)(9) provides that an officer or employee of a government agency receiving salary, per diem, or reimbursement for expenses from another government entity has a noninterest in a contract between the two agencies “unless the contract directly involves the department of the governmental 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.”

Sections 1091(b)(13) and 1091.5(a)(9) expressly refer to a “person receiving salary, per diem, or reimbursement for expenses from a government entity,” which has generally been interpreted to cover such payments to an officer or employee of a government entity. Because the exceptions make no mention of paid independent contractors of government entities, we must determine if they are subject to the same remote interest and noninterest exceptions as any other officer or employee of a government entity.

In a similar situation, the Commission examined whether the exceptions under Sections 1091(b)(13) and 1091.5(a)(9) would also apply to an independent contractor of a government entity. (See *Winuk* Advice Letter, No. A-24-103.) In concluding that it would, the Commission referred to the *Nerland* Advice Letter, No. A-19-014, which found that the remote interest exception under Section 1091(b)(1), which expressly applies to “an officer or employee of a nonprofit entity,” would also apply to an independent contractor of a nonprofit entity. Specifically, the Commission stated:

While an independent contractor is distinguishable from a business’s regular employees, an independent contractor is still employed by the contractual employer under a broad definition of “employment.” Moreover, there is no reason to categorically exclude independent contractors from the remote interest exception in Section 1091(b)(1). In many cases, an independent contractor is performing essentially the same work that an employee might perform for a 501(c)(3) organization, and generally an independent contractor’s interest in his or her contractual employer is more attenuated than a regular employee’s interest. Accordingly, there is no public interest served in excluding an independent contractor from Section 1091(b)(1) and there is no reason to believe that the Legislature intended to do so in promulgating Section 1091.

(*Nerland* Advice Letter, No. A-19-014.)

Based on the *Nerland* Advice Letter, the Commission found in the *Winuk* Advice Letter that for the same reasons, the Legislature did not intend to categorically exclude paid consultants of a government entity from coming within the scope of the exceptions provided in Sections 1091(b)(13) and 1091.5(a)(9).⁸ (*Winuk* Advice Letter, No. A-24-103.) Accordingly, Section 1090 does not generally prohibit a contract between two government entities where an official serves as a board member for one entity and is employed by the other entity as an independent contractor.

If Board President Diamond or the District needs additional assistance regarding Section 1090, and particularly whether any of the statutory exceptions apply to a specific contract with the Town, you should seek further advice once a contract is identified.

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

Sincerely,

Dave Bainbridge
General Counsel

JennaRinehart

By: Jenna C. Rinehart
Senior Counsel, Legal Division

JCR:aja

⁸ This conclusion appears consistent with the legislative history regarding these statutory exceptions (Stats. 1991, ch. 382, § 1), which expressed a general concern that “government employees who also serve as local elected officials are often prohibited from voting on a broad range of issues, rather than just those bills that affect their employers. For example, a peace officer who is also an elected official may be prohibited from voting on contracts dealing with any city agency, rather than only those contracts affecting the police department. (See report of Assembly Committee on Elections, Reapportionment and Constitutional Amendments, May 9, 1991.) It is also generally consistent with previous advice letters where we have extended application of Section 1091’s remote interest exceptions when, as here, the official’s interest is no less remote than the interest specified in the exception. (See, e.g., *Schons* Advice Letter, No. A-17-129; *Raymond* Advice Letter, No. A-21-003; *Whitham* Advice Letter, No. A-19-129.)