



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

January 25, 2021

Joel Campbell-Blair
County Counsel
County of Del Norte
981 H Street, Suite 220
Crescent City, CA 95531

Re: Your Request for Advice
Our File No. A-21-010

Dear Mr. Campbell-Blair:

This letter responds to your request for advice on behalf of Del Norte County Supervisor Darrin Short regarding the Political Reform Act's conflict of interest provisions and 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 or the 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 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

Under the Act and Section 1090, may County Supervisor Short take part in the contracting process between the County and Del Norte Ambulance, which is the employer of his adult, financially independent son?

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 18110 through 18997 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

While other laws may apply, neither the Act nor Section 1090 are implicated by a government contract's potential effect on a public official's adult, financially independent child. Accordingly, the supervisor is not prohibited from taking part in the decisions under the Act or Section 1090.²

FACTS AS PRESENTED BY REQUESTER

Darrin Short is a member of the Del Norte County Board of Supervisors. His adult, financially independent son is employed by a local ambulance service, Del Norte Ambulance. Supervisor Short's son has no ownership interest in the company and is not in a management position. The County of Del Norte has a contract with Del Norte Ambulance which long predates Supervisor Short's election to the Board of Supervisors.

ANALYSIS

The Act

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he 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 his or her immediate family," or on certain specified economic interests. (Section 87103.) Under Section 82029, "immediate family" is defined as "the spouse and dependent children." "Dependent children," in turn, is defined as "a child . . . of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return." (Regulation 18229.1.) Supervisor Short's son is a financially independent adult and, thus, is not considered a "dependent child" or Supervisor Short's "immediate family" for purposes of the Act's conflict of interest provisions. Accordingly, the Act does not prohibit Supervisor Short from taking part in a contracting process or decision involving or affecting Del Norte Ambulance.

Section 1090

Section 1090 provides, "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." (Section 1090(a).) 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. 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*

² We emphasize that our advice is limited to the provisions of the Act and Section 1090. We caution that other provisions of law may apply, and can express no opinion regarding these laws including, but not limited to, common law conflict of interest provisions.

of Imperial Beach v. Bailey (1980) 103 Cal.App.3d 191, 197.) Under Section 1091(b)(4), however, an official has only a remote interest in the earnings of the official's *minor* children. Furthermore, the official must have a specific financial interest in the contracts of his or her adult children to have a conflict under Section 1090. "[T]here is no similar determination that a parent has either a direct or indirect financial interest in the property or earnings of an adult child." (92 Ops.Cal.Atty.Gen. 19 (2009).) The Attorney General has opined that such a relationship does not invalidate a contract under Section 1090. (*Ibid.*) Accordingly, Section 1090 does not prohibit Supervisor Short from taking part in any contracting process between the County and Del Norte Ambulance.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

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