



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 28, 2025

Scott E. Huber  
Town Attorney, Town of Paradise  
2281 Lava Ridge Court, Suite 300  
Roseville, CA 95661

Re: Your Request for Advice  
**Our File No. A-24-043**

Dear Mr. Huber:

This letter responds to your request on behalf of the Town of Paradise (“Town”) and Council Member Greg Bolin 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.

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. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

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 Butte 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 Section 1090 prohibit the Town from providing funds through a First Time Home Buyer (“FTHB”) program to a resident, who will subsequently contract with Council Member Bolin for the construction or purchase of a home in his private capacity, given his prior participation in creating the FTHB program as a council member?

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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.

## CONCLUSION

No. As explained below, Section 1090 does not prohibit the Town from providing funds through the FTHB program to a resident who will subsequently contract with Council Member Bolin for the purchase or construction of a home. However, under the Act, Council Member Bolin is prohibited from taking part in any decisions involving the FTHB applications submitted to the Town by a client who is a source of income of \$500 or more in the 12 months prior to the decision.

## FACTS AS PRESENTED BY REQUESTER

You are the attorney for the Town of Paradise, which has a FTHB program that was established immediately following the Camp Fire in 2018. The program is funded through the California Department of Housing and Community Development (the “HCD”).

Council Member Bolin owns a construction company. As a city council member, Council Member Bolin has participated in prior council decisions relating to the loan program, including the initial 2018 decision referenced above, as well as subsequent decisions in 2021, 2023, and 2024, to expand eligibility for the program and approve additional funding.<sup>2</sup>

Under the Town’s FTHB program, applicants may receive a low-interest loan, of up to \$190,430 for home reconstruction costs, and, in addition, may also be eligible for grants, of up to \$7,500. The program could also potentially cover the entirety of the costs to construct a home, without the homeowner having to apply for a traditional loan, or rely on insurance payouts. However, with construction costs having risen substantially since the Camp Fire, many of the participants in the program get traditional funding for part of their loan and then utilize the FTHB program for a portion of the costs. The FTHB agreement for funds is between the Town and the resident property owner. You also noted that last year, the Town’s Building Department issued building permits to 87 different contractors.

The Council Member has never been a recipient of FTHB funds as a resident or through his business. You have described two scenarios where a resident of the Town has qualified for the FTHB loan program for the purposes of either purchasing a newly constructed home or constructing a home that may result in Council Member Bolin’s company receiving proceeds from the loan. You present two scenarios where Council Member Bolin would receive FTHB funds from a client. In the first scenario, the Council Member’s company built a home “on speculation” and the buyer intends to utilize the Town’s FTHB program to purchase it. The buyer entered into a purchase contract to purchase the home. In looking at financing options, the buyer would like to use the FTHB for the underlying loan on the property which is under contract. There are no contracts between the Town and the construction company, either before, during, or after the sale of the home.

In the second scenario, a property owner has plans created for a home on their property, replacing the prior home on the property that was destroyed in the Camp Fire. The property owner applied for a FTHB loan and was approved. The property owner obtained no-cost bids from local

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<sup>2</sup> As noted above, we do not express any opinion on the instances of past conduct, including Council Member Bolin’s involvement in the previous decisions.

contractors, and the lowest bidder was Council Member Bolin's construction company. The property owner did not disclose that they wanted to utilize FTHB funds, and at this point, no funds have been distributed. The FTHB loan is between the property owner and the Town, and the construction company does not execute any documents directly with the Town. As above, there are no contracts between the Town and the construction company either before, during, or after the construction of the home on the property.

## 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. 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.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.)

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) Therefore, for purposes of Section 1090, participating in making a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall*, supra, at p.569.) Thus, the final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented.

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.) 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 his or her agency regardless of whether the member actually participates in the making of the contract. (*Thomson*, supra at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).) Therefore, 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. Instead, the entire governing body is precluded from entering into the contract. (*Thomson*, supra, at pp. 647-649; *Stigall*, supra, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

Additionally, Section 1090's prohibition extends to prohibit an official from subsequently acquiring an interest in a contract the official has previously participated in making. (See, e.g., 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

As applied to Council Member Bolin, Section 1090 prohibits him from participating in the FTHB program as an applicant because, as an applicant, the Council Member has a financial

interest in any contract with the Town. However, the determinative issues presented under the questions posed are whether Section 1090 also prohibits the Council Member from acquiring an interest in a contract between the Town and another party under the FTHB program and whether Section 1090 prohibits the Town from providing funds through the FTHB program to a resident who will subsequently contract with Council Member Bolin, utilizing those funds for the purchase or construction of a home.

Under the facts provided, the Town will enter into an agreement with a resident of the Town who will utilize the Town's FTHB funds for the purpose of either purchasing a newly constructed home or constructing a home. Although Council Member Bolin's construction company would not enter into a contract with the Town, under both of the scenarios you have presented, it would contract with a client who will receive funds from the Town through the FTHB program, for either the construction or purchase of a home.

Generally applying Section 1090, Council Member Bolin may not participate in the making of any contract in which he has a financial interest, and this prohibition extends to subsequently acquiring an interest in a contract the official has previously participated in making. Moreover, as a member of the governing body, Council Member Bolin is presumed to take part in all contracts entered into by the Town. Accordingly, Section 1090 potentially prohibits Council Member Bolin from acquiring an interest in the contract between the Town and the homeowner as the homeowner's selected contractor, which could extend to prohibit the Town from entering the contract with the homeowner, barring an applicable exception. Similarly, Section 1090 also potentially prohibits Council Member Bolin from acquiring an interest in an existing contract between the Town and the homeowner by subsequently contracting with the homeowner, barring an applicable exception.

#### *Remote and Noninterest Exceptions*

The Legislature has expressly defined certain financial interests as "remote" or "noninterest" exceptions to Section 1090's general prohibition. Where a remote interest is present, the contract may be lawfully executed provided (1) the officer discloses his or her financial interest in the contract to the public agency; (2) the interest is noted in the public body's official records; and (3) the officer completely abstains from any participation in the making of the contract. (Section 1091.) Where a noninterest is present, the contract may be executed without the abstention. (Section 1091.5.)

Relevant to the present situation is the noninterest exception set forth in Section 1091.5(a)(3) for "public services generally provided." That exception provides that an officer or employee "shall not be deemed to be interested" in a public contract if his or her interest in that contract is "[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board."

The California Supreme Court considered the application of this noninterest exception and read the exception to establish the following rule:

If the financial interest arises in the context of the affected official's or employee's role as a constituent of his or her public agency

and recipient of its services, there is no conflict so long as the services are broadly available to all others similarly situated, rather than narrowly tailored to specially favor any official or group of officials, and are provided on substantially the same terms as for any other constituent.

(*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1092.)

With respect to an agency's permissible exercise of discretion in providing a public service generally provided under the exception, the Supreme Court stated:

The presence of discretion in the formation of a contract that section 1091.5(a)(3) purportedly permits is not fatal, unless the discretion can be exercised to permit the special tailoring of benefits to advantage one or more board members over their constituency as a whole. Absent such a risk of favoritism, discretion is unproblematic.

(*Id.* at p. 1100.)

Thus, the noninterest exception set forth in Section 1091.5(a)(3) applies if: (1) the interest arises in the context of the affected official's or employee's role as a constituent of the public agency and recipient of its services; (2) the service at issue is broadly available to all those whom are similarly situated and is not narrowly tailored to specially favor an official or group of officials; and (3) the service at issue is provided on substantially the same terms as for any other constituent.

The phrase "on the same terms and conditions" requires there be no special treatment of an official, either express or implied, because of that person's status as an official. (*Lexin, supra*, at p. 1101.) Accordingly, the public services exception generally will not apply when a provision of the service involves an exercise of discretion by the public body that would allow favoritism toward officials, or occurs on terms tailored to an official's particular circumstances.<sup>3</sup>

Under the circumstances presented, any benefit to Council Member Bolin is through the receipt of public services that have been provided at the discretion of the homeowner, not the Town. Moreover, participation in the FTHB program is conditioned on the resident's qualifications as a potential loan recipient, not on consideration of the official's qualifications as a builder or seller, in making the decision. Any benefit that Council Member Bolin may ultimately receive is the same as any other builder or seller, and there are no facts indicating any tailored consideration of the qualifications of Council Member Bolin's business only of the clients as the loan recipients. Therefore, Council Member Bolin has a noninterest in the grant of funds to his clients under Section 1091.5(a)(3). Section 1090 would not prohibit the Town from providing funds through the FTHB program to a recipient resident, who will subsequently contract with Council Member Bolin for the purchase or construction of a home.

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<sup>3</sup> *Lexin, supra* at 1088, 1100 at note 28; 88 Ops.Cal.Atty.Gen. at 128 ("discretionary or highly customized services" benefitting official would not come within "public services" exception), 92 Ops.Cal.Atty.Gen. at 71.

*The Act*

Section 87100 prohibits any public official from making, participating in making, or otherwise using an official position to influence a governmental decision in which the official has a financial interest. Pertinent to your facts, the Act's conflict of interest provisions apply to financial interests based on the following:

- 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 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).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

Based on your facts, and assuming the client has promised or provided Council Member Bolin with income of \$500 or more in the 12 months prior to the decision, the Council Member has a source of income interest in clients with whom his business has a contractual agreement for the purchase or construction of a home. Note, that while Council Member also has interests in his business and his personal finances, it is unnecessary to examine these interests further in light of the conclusion below that Council Member Bolin is prohibited from taking part in Town decisions involving a client's application due to the financial effect on the client.

*Foreseeability and Materiality*

Regulation 18701(a) states that a financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in the decisions. 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. (Regulation 18701(a).) Similarly, a reasonably foreseeable financial effect of a governmental decision on an official's financial interest is material if the source is an applicant, contracting party, or is otherwise named or identified as the subject of the proceeding. (Regulation 18702.3).

Here, the Town would decide whether Council Member Bolin's clients would receive an FTHB loan. As loan applicants, these clients would be the subject of the proceeding, and any financial effect of the decision is presumed to be reasonably foreseeable and material. Therefore, Council Member Bolin has a disqualifying financial interest in these decisions and is prohibited

from making, participating in making, or using his position to influence<sup>4</sup> any FTHB loan applications submitted to the Town by his clients.

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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<sup>4</sup> A public official uses an official position to influence a governmental decision if the official: (1) 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 (2) 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).)