



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 25, 2025

Pamela Galera
Department of Parks, Recreation & Community Services
City of Riverside

Re: Your Request for Advice
Our File No. A-24-096

Dear Ms. Galera:

This letter is in response to your request for advice regarding the Political Reform Act (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 Riverside 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 you, the Director of the Parks, Recreation & Community Services Department for the City of Riverside (the City), from taking part in, or the City from entering into, a contract with Pacific Advanced Civil Engineering, Inc. (PACE), where PACE's president, Mark Krebs, is in a dating relationship with you and you plan to marry him in the next year or two?

CONCLUSION

Under the Act, while dating Mr. Krebs, accepting gifts from him and while he has a business interest in PACE, you may not make, participate in making or attempt to influence a governmental decision regarding the City's prospective contract with PACE to the extent those gifts aggregate to \$630 or more in the 12 months prior to the decision. Similarly, once married, you will have a source

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.

on income interest in PACE and may not make, participate in making or influence a governmental decision regarding the City's prospective contract with PACE. Under Section 1090, you also have a potential financial interest in any contract between the City and PACE. However, so long as you completely abstain from making or participating in the making of the potential contract between the City and PACE (as also required under the Act), Section 1090 would not prohibit the City from entering that contract.²

FACTS AS PRESENTED BY REQUESTER

You are the Director of the Parks, Recreation & Community Services Department for the City of Riverside (the City). You have been in a personal relationship with the president of Pacific Advanced Civil Engineering, Inc. (PACE), Mark Krebs, for over three years. PACE is a prospective bidder on a City project (Project) for design and engineering consultant services. PACE has over 100 employees and 35 years of experience.

You and Mr. Krebs are not married or engaged, and you do not live together or mingle any finances. You have received several gifts from Mr. Krebs, including expensive jewelry, clothes, patio lights, binoculars, blankets, books, appliances, flowers, and concert tickets. He usually pays for meals and travel expenses, including a trip to Italy. You also give him gifts and occasionally pay for meals and travel expenses. You and Mr. Krebs plan to get married in the next year or two.

Your plan is to remove yourself from the application, selection, and day to day management of the Project. However, as PACE's president, Mr. Krebs would oversee the Project. You will not be on the selection committee for the City. However, as the Director of the department, you would typically, as a part of your duties, review and sign a staff report recommending and authorizing the contract, and your name would appear on the staff report as the Director.

ANALYSIS

The governmental decision at issue may occur before or after you and Mr. Krebs are married. Therefore, we separately address the conflicts of interest relevant to your current dating relationship and your prospective marriage with Mr. Krebs.

A. Dating Relationship with Mr. Krebs.

1. The Act.

The Act defines a "gift" as:

[A]ny payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in

² We are statutorily prohibited under Section 1090 from providing any advice related to past conduct, and we do not analyze conduct, if any, involving the contract that may have already occurred. (Section 1097.1(c)(2).)

the regular course of business to members of the public without regard to official status.

(Section 82028(a).)

Under the Act, payments to public officials that are “gifts” must be reported, are subject to limits, and may create a conflict of interest in a governmental decision financially affecting the gift giver. A gift must be reported if it is valued at \$50 or more from a single source in a calendar year. (Section 87207.) The annual gift limit for 2025 is \$630. (Section 89503; Regulation 18940.2.)

As a public official, payments you receive that confer a personal benefit will generally qualify as “gifts” under the Act. Here, you have received several items from Mr. Krebs, including expensive jewelry, clothes, patio lights, binoculars, blankets, books, appliances, flowers, and concert tickets. You state that Mr. Krebs usually pays for meals and travel expenses, including a trip to Italy. Gifts to you from Mr. Krebs will trigger the Act’s gift requirements, unless an exception applies.

2. The “Bona Fide Date or Dating Relationship” Exception.

Regulation 18942 excludes from the definition of “gift” payments made related to a “Bona Fide Date or Dating Relationship,” subject to certain limitations. More specifically, the regulation excludes:

Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act’s conflict of interest provisions if the value meets the amount specified in Regulation 18940.2 [\$630].

(Regulation 18942(a)(18)(A).)

Regulation 18942(a)(18)(D) lists the following as an impermissible source of personal benefits:

- (ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official’s agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act’s conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.

In this case, you are the Director of the Parks Department for the City. You have been in a personal relationship with, Mr. Krebs, PACE’s president, for over three years. PACE is a prospective bidder on a City project for design and engineering consultant services. Mr. Krebs is a person who may reasonably have a contract pending before your agency. Thus, because Mr. Krebs

is an impermissible source of personal benefits under Regulation 18942(a)(18)(D), gifts from Mr. Krebs received as a part of your dating relationship are not reportable or subject to limits; but, if the aggregate value of the gifts exceeds \$630 in a calendar year, the Act's conflict of interest disqualification provisions will apply.

3. Interest in a Source of Gifts.

The Act's conflict of interest provisions prohibit 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. (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).) Section 87103 of the Act lists several types of financial interests that can give rise to a conflict of interest, including an economic interest in any source of gifts to an official if the gifts aggregate to \$630 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18702.4.)

Based on the facts provided, you are in a dating relationship with Mr. Krebs who has provided you with gifts that include jewelry, clothes, patio lights, binoculars, blankets, books, appliances, flowers, meals and travel expenses – all of which aggregate to more than \$630. To the extent that you receive gifts from him aggregating \$630 or more in the 12 months prior to the decision at issue, you will have "a source of gift" interest in Mr. Krebs, the president of PACE, a company that will be a named party in the upcoming City contract decision. At issue is whether you may participate in the contract decision where Mr. Krebs is a source of gift interest to you.

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in a decision. (Regulation 18701(a).) An interest is explicitly involved in a decision if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (*Ibid.*)

Under Regulation 18702.4(b), the financial effect of a governmental decision on the source of a gift to an official, as identified in Section 87103(e), is material if the official knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the standards applied in Regulation 18702.1 Here, the facts indicate that Mr. Krebs has a financial interest in PACE.

Under Regulation 18702.1(a)(1), the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity is material if the entity is a named party in, or the subject of, the decision. Because Mr. Krebs's business interest, PACE, is explicitly involved as a named party in the contract decision, it is reasonably foreseeable that the decision would have a material financial effect on your source of gift interest.

Accordingly, under the Act, while dating Mr. Krebs, accepting gifts from him and while he has a business interest in PACE, you may not make, participate in making³ or attempt to influence⁴ a governmental decision regarding the City's prospective contract with PACE to the extent those gifts aggregate to \$630 or more in the 12 months prior to the decision.⁵ Because of the prohibition on "attempting to influence" the decision, you must abstain from your role as a Director in the City's contracting process, which would include signing the staff report recommending and authorizing the contract, and having your name appears on the staff report as the Director.

B. Marriage with Mr. Krebs.

1. The Act.

Section 87103 defines financial interests to include:

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. (Section 82030(a)).

If the Mr. Krebs is your spouse, you will have a community property interest in PACE as a source of income. Therefore, you will have a conflict of interest in any decisions that would have a reasonably foreseeable and material financial effect on PACE. Regulation 18702.3 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's source of income interest, and provides, in part, that the decision's effect is material if "[t]he source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1." (Regulation 18702.3(a)(4).)

As discussed above, under Regulation 18702.1(a)(1), your financial interest is explicitly involved as a named party in the decision to contract with PACE. Thus, it is reasonably foreseeable that the decision would have a material financial effect on your interest in PACE, and you may not make, participate in making or attempt to influence the decision as discussed above.

³ Where a public official is disqualified from a governmental decision based on a conflict of interest under the Act, the official is prohibited from making, participating in making or in any way attempting to use the official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) "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).) "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).)

⁴ An 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).)

⁵ Regarding Section 1090, there has never been a finding under prevailing legal authority that a source of gifts is a prohibited financial interest under Section 1090. Even assuming, *arguendo*, that a Section 1090 conflict existed, the analysis and remedy would be the same as set forth in Section B.2., *infra*. – the conflict would not prohibit the City from entering the contract at issue where the employee is not involved in making of the contract.

2. 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 applies to virtually all state and local officers, employees, and multimember bodies, whether elected or appointed, at both the state and local levels. 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) 103 Cal.App.3d 191, 197.) 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.)

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.) In analyzing whether you have a financial interest in a contract with PACE prior to your marriage, the determinative issue is whether you have a financial interest in a contract involving PACE due to the receipt of gifts from other financial benefits from PACE's president resulting from your dating relationship. While there has never been a finding under prevailing legal authority that a source of gifts is a prohibited financial interest under Section 1090, it is unnecessary to further consider this issue. As you are disqualified from taking part in decisions involving the contract under the Act, we need only to determine whether the City may enter the contract assuming, arguendo, a financial interest in the decision under Section 1090 also exists. Moreover, upon marriage, an official is financially interested the source of income of the official's spouse. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655.) Therefore, once married, you would have a prohibited financial interest in any contract between the City and PACE, and you may not participate in the making of the contract.

In light of your required recusal under the Act and potential financial interest in the decisions under Section 1090, the only pertinent issue is whether the City may enter a contract with PACE upon your recusal. You are subject to Section 1090 as a City employee. When an employee, rather than a board member,⁶ is financially interested in a contract, the employee's agency is prohibited from making the contract only if the employee was involved in the contract-making process. Therefore, as long as the employee plays no role whatsoever in the contracting process (either because such participation is outside the scope of the employee's duties or because the employee disqualifies himself or herself from all such participation), the employee's agency is not prohibited from making the contract in which the employee has a financial interest. (See, e.g., 80 Ops.Cal.Atty.Gen. 41 (1997) [Section 1090 does not apply to an employee (in contrast to members of multimember boards where participation is presumed) absent actual participation].)

⁶ 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 the contract. (*Thomson v. Call, supra*, pp. 647-649.)

Accordingly, as long as you completely abstain from making or participating in the making of the potential contract between the City and PACE, Section 1090 would not prohibit the City from entering that contract.⁷

We further note that the facts state that you will remove yourself from the application, selection, and day to day project management, and that you will not be on the selection committee for the City. But as the Director of the department, you would typically, as a part of your duties, review and sign a staff report recommending and authorizing the contract, and your name would appear on the staff report as the Director. In light of your disqualification under the Act and potential financial interest in the decisions under Section 1090, we caution that both the Act and Section 1090 requires complete abstention and, accordingly, you are not permitted to recommend or sign the staff report authorizing the contract and your name should not be included on the report.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M . F eser Jr .

By: John M. Feser Jr.
Senior Counsel, Legal Division

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⁷ We caution that Section 1090 broadly defines the “making” of a contract to include any act involving the planning, preliminary discussions, negotiations, compromises, reasoning, 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; see also *Stigall, supra*, at p. 569.)