



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 7, 2025

John S. Doimas
Assistant City Attorney
City of Santa Barbara
City Attorney's Office
PO Box 1990
Santa Barbara, CA 93102

Re: Your Request for Informal Assistance
Our File No. I-25-019

Dear Mr. Doimas:

This letter responds to your request for advice regarding the Political Reform Act (the "Act") and Government Code Section 1090, et seq.¹ Because your inquiry is general in nature, 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 Santa Barbara 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 Wendy Santamaria, a member of the Santa Barbara City Council, from taking part in decisions that would impact City-employed members of the American Federation of State, County, and Municipal Employees ("AFSCME") or the International Association of Firefighters ("IAFF"), given she is an employee of AFSCME?

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 the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

The facts do not identify any decisions before the City Council to determine whether Councilmember Santamaria is disqualified from taking part in a decision under the Act. As a general matter, she is potentially prohibited under the Act from taking part in any decision if it is reasonably foreseeable that the decision will have a material effect on her financial interest in AFSCME as a source of income, as discussed below. However, conflicts of interest under the Act must be determined on a case-by-case basis and we cannot reach any conclusion beyond the general assistance we have provided unless you identify a specific decision.

For purposes of Section 1090, you have not identified a particular contract between the City and AFSCME or IAFF, and we cannot provide specific advice regarding Section 1090 at this time. Generally, Section 1090 prohibits Councilmember Santamaria, as well as the City, from entering a contract in which she has a financial interest unless an exception applies. However, while we can express no specific opinion regarding an unidentified contract, we do note that Section 1091(b)(1) provides that an officer or employee of a nonprofit corporation has only a remote interest in the nonprofit entity. Under this exception, the governing board of an agency is not prohibited from entering a contract if the member with a financial interest discloses the interest to the board, the interest is noted in the board's official records, and the official abstains from the contracting process.

FACTS AS PRESENTED BY REQUESTER

You seek this advice on behalf of Councilmember Santamaria who is an employee of a labor union, AFSCME, receiving salary and benefits. Councilmember Santamaria was recently elected for her first term and took her seat on the City Council on January 7, 2025. The City Charter of Santa Barbara provides the City Council with considerable authority over contracts and policies. Councilmember Santamaria could vote on final decisions, and make contractual and policy commitments on labor negotiations, labor agreements, and salary adjustments of unrepresented and represented City employees. Some of these decisions will have a direct impact on AFSCME and IAFF members employed by the City.

Councilmember Santamaria is also presently an employee of AFSCME Council No. 3299, a 501(c)(5) labor organization, representing more than 37,000 University of California workers. AFSCME is the largest trade union of public employees in the United States and represents over 1.3 million public sector employees and retirees. Councilmember Santamaria's position with AFSCME is a Union Organizer and Internal Organizer and her responsibilities include some of the following: conducting internal and external organizing campaigns by establishing workplace committees; making home visits; performing worker assessments; planning and carrying out worksite organizing and comprehensive campaigns; and moving workers to use collective action to solve workplace issues.

As an employee of AFSCME Council No. 3299, Councilmember Santamaria represents Health Clinic employees working out of the University of California at Santa Barbara ("UCSB") and the University of California at Los Angeles ("UCLA"). She has no responsibility towards City employees as a Union Organizer.

In late 2023, City managers petitioned and were granted recognition by the City as a bargaining group represented through AFSCME Council No. 36, which is comprised of over 50 high level managers, which in comparison, is out of over 1,000 full time City employees. Most City employees are represented by Service Employees International Union (“SEIU”). The City managers through AFSCME Council No. 36 and the City recently negotiated and agreed upon an MOU that contains provisions affecting the salaries, benefits, and working conditions of City managers. Because of this recent agreement, there is no specific item coming before the City Council in the immediate future, but items that affect AFSCME members will eventually come before the City Council during Councilmember Santamaria’s term. Decisions that come before City Council regarding AFSCME directly affect members of AFSCME Council No. 36 employed by the City of Santa Barbara.

The IAFF is a labor union representing paid full-time firefighters and emergency medical services personnel in the United States and Canada with around 350,000 members. The IAFF is affiliated with the City of Santa Barbara Firefighters Association that has around 90 members. Councilmember Santamaria is not employed by the IAFF nor the City of Santa Barbara Firefighters Association.

Both the AFSCME and IAFF are affiliated with the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”), which is a federation of international labor unions that has little authority over the local affairs of its member unions as prescribed under the AFL-CIO Constitution. Presently, 61 unions make up the AFL-CIO, which as mentioned, includes AFSCME and IAFF. The AFL-CIO is funded by “per capita tax,” an indirect fee on union members levied by the federation on local member unions. Per capita tax levied by the AFL-CIO varies: for most members affiliated with a national labor union that is a member of the AFL-CIO, per capita tax is under a dollar per member per month. However, direct representation of employees is largely the responsibility of local labor unions such as AFSCME and IAFF. The AFL-CIO’s focus is primarily lobbying efforts on broad base policies on the national and state level instead of local efforts.

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 would 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.) An official’s financial interests, which may give rise to a disqualifying conflict of interest under the Act, are identified in Section 87103. The following interests are relevant to your situation:

- 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 their personal finances and those of immediate family members. (Section 87103.)³

As an employee of AFSCME Council No. 3299, Councilmember Santamaria has a source of income interest in AFSCME. In addition, an official always has an interest in their personal finances and those of immediate family members. (See Section 87103.)

Foreseeability and Materiality

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the 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)."

1. City Council Decisions Where AFSCME is Explicitly Involved

Regulation 18702.3 provides the applicable standard for determining whether the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a nonprofit source of income is material. Generally speaking, if AFSCME is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding, it is explicitly involved in the decision, and therefore it is reasonably foreseeable that the decision will have a material effect on Councilmember Santamaria's financial interest and she may not participate in the decision. (Regulation 18702.3(a)(1).)

2. City Council Decisions Where AFSCME is Not Explicitly Involved

Where an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation 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."

Regulation 18702.3(a)(3) provides the applicable materiality standard for a nonprofit source of income not explicitly involved in a decision. It requires the examination of three areas of possible impacts on the nonprofit entity as a result of the decision: annual gross receipt or asset/liability changes, changes to expenses, and impacts on a real property interest. For the first category, the

³ Under Regulation 18702.5(a), "[a] governmental decision's reasonably foreseeable financial effect on a public official's financial interest in personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision."

financial effect is material if the decision may result in an increase or decrease of the nonprofit organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or greater than \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is at least \$10,000. (Regulation 18702.3(a)(3)(A).)

For the second, the effect is material if the decision may cause the entity to incur or avoid additional expenses, or to reduce or eliminate expenses, in an amount equal to or greater than \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).)

For the third, the financial effect is material if the organization has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)

Generally speaking, if AFSCME is affected in any manner set forth above, it is reasonably foreseeable that the decision will have a material effect on her financial interest, and she may not participate in the decision. (Regulation 18702.3(a)(1).)

In addition to the materiality standards described above, there is also a separate materiality standard that applies in cases where there is a “nexus” between duties owed to a source of income and to the official’s public agency. Under the nexus test, any reasonably foreseeable financial effect on a source of income to a public official or the official’s spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official’s spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

However, conflicts of interest under the Act must be determined on a case-by-case basis and we cannot reach any conclusion beyond the general assistance we have provided above unless you identify a specific decision. Should Councilmember Santamaria need additional assistance regarding matters in which AFSCME is not explicitly involved, including whether the nexus test may apply, she should seek further advice identifying the specific decision.

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.) Importantly, when Section 1090 is applicable to one member of a governing body of a public entity, the prohibition typically cannot be

avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647-649.)

As you have not limited your question to an identified contract, we cannot provide advice regarding the application of Section 1090 to Councilmember Santamaria and the facts presented. However, we can generally advise that, to the extent she has a financial interest in a decision based on her employment with AFSCME, Section 1091(b)(1) provides that an officer or employee of a nonprofit corporation has only a remote interest in the contracts involving the nonprofit entity.⁴ Moreover, if a “remote interest” is present, the contract may be made if (1) the official in question discloses their financial interest in the contract to the public agency, (2) the interest is noted in the entity's official records, and (3) the official abstains from any participation in the making of the contract. (Section 1091(a).) Please note that if Councilmember Santamaria is prohibited from participating in a decision under the Act, she must also leave the room prior to the consideration of the item.

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

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⁴ Note that a decision to modify, extend, or renegotiate a contract constitutes involvement in the making of a new contract under Section 1090. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191.)