



CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

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November 13, 2025

Joshua Nelson
BEST BEST & KRIEGER LLP
500 Capitol Mall, Suite 2500
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-25-133

Dear Mr. Nelson:

This letter responds to your request for advice on behalf of the California County Assessors' Information Technology Authority regarding 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, including 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, which we have done. (Section 1097.1(c)(3).) A copy was also forwarded to the Sacramento County District Attorney's Office. 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 California County Assessors' Information Technology Authority ("CCAIT Authority") from contracting with Just Appraised, Inc. ("JA") for the development of its new information technology program, where Matt Kissinger is employed by JA as an independent contractor and previously worked for TEKsystems, Inc., the independent

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.

contractor tasked with developing the request for proposals (“RFP”) and assisting in the review and scoring of the proposals?

CONCLUSION

Yes. TEKsystems, Inc. and Mr. Kissinger, as its project manager, advised the agency on the formation of its RFP. Due to his participation in the making of the RFP, Mr. Kissinger is a public officer subject to the prohibitions of 1090. He has a financial interest in JA and, therefore, would have a prohibited financial interest in the new information technology program contract at issue between the CCAIT Authority and JA. Thus, the CCAIT Authority is prohibited from contracting with JA for the development of its new information technology program.

FACTS AS PRESENTED BY REQUESTER

Passed into law by the voters in November of 2020, Proposition 19 changed property tax laws and placed new administrative and valuation requirements on all Assessor Offices throughout the state. These requirements mandate the cooperation of County Assessors throughout the state to certify and share property value information statewide.

The CCAIT Authority was created in November 2022 as a joint powers authority (“JPA”) for the purpose of implementing a new information technology program for California County Assessors to assist in the standardization of statewide assessment practices. The program receives state funding.

The CCAIT Authority’s first project is to create a portal for taxpayers to file required forms and a mechanism for counties to collaborate on data collection and communication, as mandated by Proposition 19. CCAIT Authority’s second project is to create a public portal for filing property tax exemption claim forms electronically with all participating Assessor Offices. This will provide a more efficient means of communicating and working with property owners, organizations, and other California Assessors.

After an initial proof of concept effort, the CCAIT Authority is currently conducting a competitive procurement to secure an information technology vendor to develop and implement the two projects noted above through a single contract and program (the “Project”).

CCAIT Authority does not have any direct employees and has engaged TEKsystems, Inc. (“TEK”) to provide project management support in the development and issuance of the request for proposals for the Project and to assist in the review and scoring of proposals. TEK assigned Matt Kissinger as the CCAIT Authority’s project manager, and he assisted in the development of the RFP. Mr. Kissinger ultimately left TEK and now acts as an independent contractor for JA. His duties for JA are unrelated to the Project, and he has reached out to a CCAIT Authority Director and to member agency staff to discuss JA’s ability to provide unrelated services to those counties. JA has submitted a proposal to the CCAIT Authority for the Project. Proposals are currently being evaluated, and no contract has been entered into for the Project.

ANALYSIS

Section 1090 generally prohibits public officers or employees, 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. 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 contract terms 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.) Although Section 1090 does not specifically define the term financial interest, case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerger* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Importantly, Section 1090 prohibits the use of a public position for self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124 [independent contractor leveraged his public position for access to city officials and influenced them for his pecuniary benefit].) Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 239, citing *Stigall, supra*, at p. 569.)

Independent Contractors Under Section 1090.

In 2017, the California Supreme Court held that “the Legislature did not intend to categorically exclude independent contractors from the scope of section 1090” in its language applying the prohibition to “public officers and employees.” (*Sahlolbei, supra*, at p. 238.) The Court held that Section 1090 applies to those independent contractors who are “entrusted with ‘transact[ing] on behalf of the Government.’” (*Id.* at p. 240, quoting *Stigall, supra*, 58 Cal.2d at p. 570.) On this issue, the *Sahlolbei* Court explained:

In the ordinary case, a contractor who has been retained or appointed by a public entity and whose actual duties include engaging in or advising on public contracting is charged with acting on the government’s behalf. Such a person would therefore be expected to subordinate his or her personal financial interests to those of the public in the same manner as a permanent officer or common law employee tasked with the same duties.

(*Sahlolbei, supra*, at p. 240.)

Section 1097.6 codifies prevailing legal authority set forth in case law, including the *Sahlolbei* decision, and FPPC advice letters relevant to the questions at issue here: whether an independent contractor for a project is a “public officer” subject to Section 1090, and if so, whether a subsequent contract with the officer for a later phase of the same project violates Section 1090.

As to whether TEK and its project manager, Mr. Kissinger, are subject to Section 1090 as public officers for the Project, Section 1097.6(a) provides:

(1) For a public entity that has entered into a contract with an independent contractor to perform one phase of a project and seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project, the independent contractor is not an “officer” under this article if the independent contractor’s duties and services related to the initial contract did not include engaging in or advising on public contracting on behalf of the public entity.

(2) For purposes of this section, “engaging in or advising on public contracting” means preparing or assisting the public entity with any portion of the public entity’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with [*8] the public entity.

TEK and its project manager, Mr. Kissinger, were hired to provide project management support in the development and issuance of the CCAIT Authority’s RFP for the Project and to assist in the review and scoring of proposals. As a result, TEK and Mr. Kissinger engaged in advising the CCAIT Authority on its RFP for the Project and are public officers subject to Section 1090.

As to whether it is permissible for the CCAIT Authority to enter into a subsequent contract with Mr. Kissinger related to the Project, Section 1097.6(b) states that it is not a violation of Section 1090 under the following conditions:

(1) If an independent contractor is an officer under subdivision (a), then it is not a violation of this article for the public entity to enter into a subsequent contract with that independent contractor for a later phase of the same project if the independent contractor did not engage in or advise on the making of the subsequent contract during its performance of the initial contract.

(2) For purposes of this section, an independent contractor does not “engage in or advise on the making of the subsequent contract” by participating in the planning, discussions, or drawing of plans or specifications during an initial stage of a project if that participation is limited to conceptual, preliminary, or initial plans or specifications and all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.

The facts establish that the above conditions are not met. Mr. Kissinger, through his participation as project manager for TEK, participated in the making of the Project RFP for which JA has submitted its proposal. As discussed below, because he advised CCAIT Authority on the making of this contract and he has a financial interest in JA, Section 1090 prohibits the CCAIT Authority from contracting with JA.

Financial Interests

As noted above, Section 1090 prohibits an officer from subsequently acquiring a financial interest in a contract that the officer 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].) Importantly, a financial interest may be direct or indirect. We have previously advised that where the contract will contribute to the financial health of the contracting party with which the officer is associated, the officer has an indirect financial interest in the contract that is “the type of indirect interest Section 1090 attempts to thwart.” (*Khuu* Advice Letter, No. I-14-107, [city councilmember had an indirect financial interest in his new employer’s clients and the city could not enter into or renew contracts with city contractors that were his new employer’s clients]; *Reyes* Advice Letter, No. A-15-099 [city mayor disqualified under Section 1090 even though his employer was not the contracting party but was instead a subcontractor of the contracting party]; *Schons* Advice Letter, No. A-15-114 [consulting firm disqualified from conducting the hiring process for potential vendors even though the process would be conducted blindly, because the consulting firm knew that it had prior or ongoing business relationships with some of the potential vendors]. Lastly, while the Legislature has expressly defined certain financial interests as “remote” or “noninterest” exceptions to Section 1090’s general prohibition in Sections 1091 and 1091.5, respectively, none of those exceptions are relevant to these facts.

Although Mr. Kissinger is employed as an independent contractor for JA, he has more than a limited relationship with JA, as indicated by his reaching out to the Authority’s staff for additional, unrelated work on behalf of JA. Therefore, Mr. Kissinger has a financial interest in the Project contract due to his financial interest in his employer, JA, and the Project contract will benefit the financial health of JA. Pursuant to Section 1090, the CCAIT Authority may not contract with JA for the Project contract, as Mr. Kissinger acted as the project manager and adviser in the formation of the RFP for the Project and has a financial interest in JA.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja