



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 13, 2025

Jesse Bullis  
5330 Darrah Rd  
Mariposa, CA 95338

Re: Your Request for Advice  
**Our File No. A-24-143**

Dear Mr. Bullis:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under the Act and Section 1090, and 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 Mariposa 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

Do you have a disqualifying financial interest under the Act or Section 1090 in the decision to approve the John C Fremont Healthcare District’s contract with all its union employees due to your spouse’s employment as a union employee at the District?

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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

Based on the facts provided, you do not have a disqualifying interest under the Act or Section 1090, and you may take part in the decision. Because the District is a local government agency, your spouse's salary or benefits are excepted from the Act's definition of "income." Further, the contract will affect all union employees' pay scales according to their classification and will not uniquely affect your spouse's employment, so it is not reasonably foreseeable the decision would have material financial effect on your personal finances under the Act. Under Section 1091.5(a)(6), you have a "noninterest" in the decision because your spouse has been employed in her current position for eight years prior to your election to office, the decision applies equally to all members in each classification and does not change the status quo of your spouse's employment.

## FACTS AS PRESENTED BY REQUESTER

You were recently elected to the Board of Directors ("Board") for the John C Fremont Healthcare District ("District"), a public entity. Your spouse, Marcella Bullis, has been a District union employee for the past ten years. She is an Emergency Room Technician and has been in this position for the past eight years. Her union is Unit 3, the largest bargaining unit of three, which will all be under one joint contract that will apply to every unionized employee in the District.

The Board will soon vote on the final approval of the union contract, which has pay scales for all classifications within the District. These pay scales are being updated as a normal part of the collective bargaining process and were negotiated prior to your election. The updates apply uniformly to all employees within each respective classification, including your spouse's position. Your spouse's position is neither unique nor specific to her. Her position, duties, and pay rate are identical to those of other Emergency Room Technicians within the same classification. She is not being promoted, demoted, or receiving any position-specific alteration. She will remain in the same role, with the same job duties and employment status, following the contract's ratification. Her compensation and position will simply align with the updated pay scales that apply uniformly across the District as a result of the collective bargaining process.

## ANALYSIS

### *The Act*

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using their 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).) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include pertinent to these facts:

- Any source of income aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- A public official has an economic interest in their personal finances, including those of their immediate family.

Section 82030(a) defines “income” to include a community property interest in a spouse’s income. However, Section 82030 specifically excludes from the definition of income salary and reimbursement for expenses and per diem received from state, local, or federal government agencies. (Section 82030(b)(2).) Interpreting this provision, Regulation 18232(a) defines “salary” to include any payments made by a government agency to a public official or accrued to the benefit of a public official as consideration for the public official’s services to the government agency, including wages, pension benefits, health and other insurance coverage, rights to compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and similar benefits. As a result, you do not have a “source of income” interest in the District related to your spouse’s employment.

We next examine whether it is reasonably foreseeable that the decision would have a material financial effect on your personal finances, including your spouse’s finances. Under Regulation 18701(a), “[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.” If a financial interest is not explicitly involved in decision, a financial effect is reasonably foreseeable if it “can be recognized as a realistic possibility and more than hypothetical or theoretical.” (*Ibid.*) However, Regulation 18702.5(b)(1) provides that a personal financial effect is not material if the decision at issue would affect only the salary that the official or member of the official’s immediate family receives from a government agency unless the decision would alter the employment position or set a unique salary.<sup>2</sup> Additionally, the financial effect is not material if the decision is to establish or change the benefits or retirement plan of the official or the official’s immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group. (Regulation 18702.5(b)(4).)

Based on the facts provided here, the decision at issue would not have a material financial effect on your personal finances under Regulation 18702.5(b)(1). The union contract will increase pay scales for all union employees, including your spouse, according to their classification.

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<sup>2</sup> A reasonably foreseeable financial effect of a decision on an official’s personal finances is material under Regulation 18702.5(b)(1) if it is a decision to appoint (other than an appointing decision permitted under subdivision (b)(2) and (3)), hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of the official’s immediate family, or to set a salary for the official or a member of the official’s immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official’s immediate family member is the only person in the job classification or position.

Therefore, you do not have a disqualifying personal financial interest in the union contract approval decision under the Act.

### *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. 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.)

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. (*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.) Importantly, when Section 1090 applies 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 typically precluded from entering into the contract. (*Id.*, see also *Stigall v. City of Taft, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

For purposes of Section 1090, you will have a financial interest in any contract that financially benefits your spouse under community property laws, and you will be considered to be participating in the making of the contract as a member of the District Board. (See *Thorpe v. Long Beach Community College Dist.*, (2000) 83 Cal.App.4th 655, 659; 81 Ops.Cal.Atty.Gen. 327, 328 (1998).) However, the Legislature has expressly defined certain financial interests as “remote interests” and “noninterests” that, if applicable, allow a contract to be executed despite Section 1090’s prohibition. If a “remote interest” is present, as defined in section 1091, the contract may be made if the officer (1) discloses their financial interest in the contract to the public agency, (2) such interest is noted in the entity’s official records, and (3) the officer completely abstains from any participation in the making of the contract. (See Section 1091.) If a “noninterest” is present, as defined in Section 1091.5, the contract may be made without the officer’s abstention, and generally, a noninterest does not require disclosure. (See Section 1091.5.)

Section 1091.5(a) provides that an officer shall not be deemed to be interested in a contract if the officer’s interest is:

- (6) That of a spouse of an officer or employee of a public agency in his or her spouse’s employment or officeholding if his or her spouse’s employment or officeholding has existed for at least one year prior to his or her election or appointment.

The legislative intent of this exception is narrowly construed to allow a spouse to retain employment even though the other spouse is a member of a board that participates in the employment contract, so long as there is no change in the employment status. (*Thorpe v. Long*

*Beach Community College District, supra.*) The exception also permits an officer to participate in making an annual collective bargaining agreement with a spouse's union, so long as the spouse's employment existed for one year prior to the officer's election, as required under Section 1091.5(a)(6). (69 Ops.Cal.Atty.Gen 102 (1986), citing 61 Ops.Cal.Atty.Gen 412 (1978).) Additionally, we have previously advised, consistent with the Attorney General's opinions noted, that to the extent that a collective bargaining agreement does not change the status quo of the spouse's employment, and the decisions apply equally to all members of the unit involved, the noninterest exception in Section 1091.5(a)(6) applies to allow the officer to participate. (See *Drivdahl* Advice Letter, No. A-19-034, [a county supervisor may participate in changes to a collective bargaining agreement and budget that does not change his spouse's employment status and applies equally to the unit].)

Your spouse has been employed in her current position for the past eight years. The final approval of the union contract will not involve any changes to your spouse's employment status. It will provide for negotiated pay scales by employee classification that will apply to all union employees, including your spouse. Therefore, based on the facts provided, you will have a noninterest in the contract approval decision under Section 1091(a)(6), and you are not prohibited from participating in the making of the contract under Section 1090.

If you have other questions on this matter, please contact me at [KHarrison@fppc.ca.gov](mailto:KHarrison@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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