



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

November 18, 2020

Gary Winuk
o/b/o Carlos Hagedorn
Via email: gwinuk@kaufmanlegalgroup.com

Warning Letter Re: FPPC Case No. 2020-01051; Carlos Hagedorn

Dear Mr. Winuk:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the “Act”)¹ and Government Code Section 1090. As you are aware, the Enforcement Division received a sworn complaint alleging that your client, Carlos Hagedorn, may have violated the provisions of Section 1090 when he served as a Trustee for the Napa Valley Unified School District (the “District”) from 2012 through 2016. The Enforcement Division is closing its file on this matter with this warning letter as discussed below.

In regard to this determination, we are required to advise you that “the decision applies only to proceedings brought by the Commission.”²

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.³ Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.”⁴ The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties.⁵

Under Section 1090, a member of a multi-member body, such as the District, is presumed to have made any contract executed by the District, even if the member recused themselves from

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 1097.1, subd. (d).

³ *Stigall v. Taft* (1962) 58 Cal.2d 565, 569.

⁴ *People v. Call* (1985) 38 Cal.3d 633, 646.

⁵ *Id.* At pp. 646-649

any participation in the contract, unless an exception applies. (*Thompson v. Call* (1985) 38 Cal.3d 633, 645.) The Legislature has provided exemptions from section 1090's prohibition that allow certain agreements to be executed. If a "remote interest" is present, as defined in Section 1091, the contract may be provided if: 1) the officer discloses his or her financial interest in the contract to the public body; 2) the interest is noted in the body's official records; and 3) the officer abstains from participating in the making of the contract.⁶

The "remote interest" exception for officers and employees of certain non-profit entities includes that of an officer or employee of a non-profit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, pursuant to Section 501(c)(5) of the Internal Revenue Code, or a non-profit corporation.⁷

The Enforcement Division found that, while most of the allegations are outside of the statute of limitations, your client voted, as a Trustee for the District, to approve payments to Legacy Youth Project ("LYP") personnel on February 4, 2016, May 19, 2016, and August 18, 2016. LYP, a tax-exempt 501(c)(3) nonprofit organization, is a youth social justice leadership program. Mr. Hagedorn is the Executive Director of LYP and receives income from LYP. As such, the actions above violated Section 1090 as Mr. Hagedorn had a financial interest in LYP and voted to approve payments to LYP personnel on February 4, 2016, May 19, 2016, and August 18, 2016 resulting in contracts between the District and LYP. The remote interest does not apply, as Mr. Hagedorn voted for these contracts.

However, the Enforcement Division has decided to close this case with this warning letter rather than a fine for the following reasons: the payments were made to a 501(c)(3) non-profit organization and did not directly benefit your client; your client has not served on the Board of Trustees for the District since 2016; and your client has no prior history of violating the Act.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or

⁶ 84 Ops.Cal.Atty.Gen. 158, 159 (2001); 81 Ops.Cal.Atty.Gen. 169, 172 (1998); 65 Ops.Cal.Atty.Gen. 305, 307 (1982).

⁷ Section 1091, subd. (b)(1).

hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter. If you have any questions regarding this letter, please contact Tara Stock at tstock@fppc.ca.gov.

Sincerely,

Angela J. Brereton

Angela J. Brereton, Chief
Enforcement Division

AJB:ts

cc: Conor Kennedy o/b/o Napa Valley Unified School District