



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 17, 2023

William H. Ihrke
City Attorney
City of Cerritos
18575 Jamboree Road, 9th Floor
Irvine, CA 92612

Re: Your Request for Advice
Our File No. A-23-057

Dear Mr. Ihrke:

This letter responds to your request for advice on behalf of the City of Cerritos and Councilmember Lynda Johnson regarding the conflict of interest provisions of the Political Reform Act (the "Act") and Government Code Section 1090.¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and 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.

In regard to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General's Office and the Los Angeles 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

May City of Cerritos Councilmember Lynda Johnson take part in decisions regarding the City Council's review and approval process for the City's yearly budget when part of that process is

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.

to budget and appropriate City funds for the Los Angeles County Sheriff's office, Councilmember Johnson's employer?

CONCLUSION

Under the Act and Section 1090, Councilmember Johnson's employment with the Sheriff's Department does not prohibit her from generally participating in the final budget approval process. However, under Section 1090 Councilmember Johnson would be prohibited from taking part in the discussions and decisions specifically involving future allocations of budgetary funds to the Sheriff's Department because of her interest in the contract between the City and the Sheriff's Department and must recuse herself from such discussions if they arise.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Cerritos ("City") and are seeking advice on behalf of City Councilmember Lynda Johnson. Councilmember Johnson is employed by the Los Angeles County Sheriff's Department ("Sheriff's Department"). The Sheriff's Department receives funding from the City Council and Councilmember Johnson seeks advice as to whether she can participate in the annual review and approval process for the City's budget given her employment by the Sheriff's Department.

Cerritos is a charter city and among other provisions in the Cerritos Charter, there is an annual budget and appropriation process that corresponds to the state's fiscal year and requires review, consideration, and approval by the Council. The City's budget has projects, programs, and services identified by department, then general categories of activities, then more detailed sub-categories, and finally broken down by specific line-items with a corresponding dollar amount.

The City contracts with the Sheriff's Department for public safety and law enforcement services. The City owns the property that the Cerritos Sheriff's Station is located in, which houses many functions of the Sheriff's office (offices, emergency operations center, police car parking, dispatch center, and jail). The City has previously and will continue to budget and appropriate funds for the Sheriff's Department as part of the annual budget process and may at other times fund specific projects, programs, and services related to public safety and law enforcement with funds from the City provided to the Sheriff's Department.

The City does not review or consider budgeting or appropriating funds for any specific employee or positions under the purview of the Sheriff's Department. The County Board of Supervisors controls the budget and allocation for all money the Sheriff's Department receives and sets salaries and pay scales for Sheriff's Department employees, City Council does not have control over those decisions. Councilmember Johnson is employed full-time for the Sheriff's Department as a Field Deputy, which is not a management position, and makes more than \$500 within a 12-month period.

ANALYSIS

The Act

As a public official, Councilmember Johnson is subject to the Act's conflict of interest provisions. Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use the public official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family," or on certain specified economic interests. (Section 87103.)

A public official has an economic interest in "[a]ny source of income...aggregating five hundred dollars (\$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." (Section 87103(c).) Under the Act, "income" expressly does not include "[s]alary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency..." (Section 82030(b)(2).) The Sheriff's Department is a local government agency; accordingly, Councilmember Johnson's salary is not considered "income" and does not require a conflict of interest analysis 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) 103Cal.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.) Participation in the making of a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, 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.) 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.) Finally, 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 precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

In this instance, it is not contested that Councilmember Johnson is a public officer subject to the provisions of Section 1090 and that any agreement between the City and the Sheriff's Department regarding law enforcement services is a contract for purposes of Section 1090. Additionally, as a member of the City Council, Councilmember Johnson is presumed to be involved in the making of all contracts by the City irrespective of whether she actually participates in the making of the contract. (*Thomson, supra*, at pp. 645, 649.) Thus, the primary question is whether Councilmember Johnson has an interest in renewing or extending the contract between the City and

the Sheriff's Department regarding law enforcement services and, if so, whether her interest is a "remote interest" or a "noninterest" as defined in Sections 1091 and 1091.5.

Of the statutory exceptions established for a remote interest and noninterest, two exceptions for contracts between government agencies are potentially applicable. First, under Section 1091(b)(13), an agency board member that receives salary, per diem, or reimbursement for expenses from another government entity has a remote interest in a contract between the two agencies. However, under Section 1091.5(a)(9), an officer or employee of a government agency receiving salary, per diem, or reimbursement for expenses from another government entity has a noninterest in a contract between the two agencies "unless the contract directly involves the department of the governmental entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record." (Section 1091.5(a)(9).) Generally, when a city contracts with a county sheriff's department, the county is the governmental entity and the sheriff's department is considered a department of the county at large. (See 83 Ops.Cal.Atty.Gen. 246 (2000).)

Based on the above, Councilmember Johnson would have a remote interest in her employment with the Sheriff's Department. If part of the budget process includes discussions and decisions specifically involving the future allocation of funds to the Sheriff's Department, in essence deciding whether to continue contracting with the Sheriff's Department, Councilmember Johnson would be required to recuse herself from those discussions due to her interest in the contract. However, Councilmember Johnson is not generally prohibited from any discussions not specifically involving the allocation of funds to the Sheriff's office. Moreover, nothing would preclude Councilmember Johnson from taking part in a general decision involving the budget, including the final vote on the budget, merely because of an allocation to the Sheriff's Department. To the extent the decision is a final vote on the budget, the decision would not involve a contract as the allocation alone does not commit funds and the disbursement of any funds is dependent on a subsequent contractual agreement. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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