



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 20, 2023

Jessica Spaid
Board of Trustees Member for PUHSD
George Sziraki, Superintendent PUHSD
1765 Industrial Drive
Auburn, CA 95603

Re: Your Request for Advice
Our File No. A-23-099

Dear Ms. Spaid and Mr. Sziraki:

This letter responds to your request for advice 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 and the Placer 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 Section 1090 prohibit Jessica Spaid ("Trustee Spaid") as a member of the Placer Union High School District Board from taking part in, or the District from entering into, a seasonal contract with her spouse, Brett Spaid, to be a head wrestling coach for Placer High School?

CONCLUSION

Trustee Spaid has a financial interest under Section 1090 in a seasonal contract between the District and her spouse to be a head wrestling coach for Placer High School. However, as explained

¹ All statutory references are to the Government Code, unless otherwise indicated..

below, the noninterest exception under Section 1091.5(a)(6) applies to allow her to take part in, and the District to enter into, the seasonal contract between the District and her spouse.

FACTS AS PRESENTED BY REQUESTER

Trustee Spaid was elected to the District Board in the November 8, 2022, election, and she was seated on December 13, 2022. Her spouse, Brett Spaid, has coached at Placer High School, a District school since November 2020.

Following Trustee Spaid's oath of office, her spouse remained as a head wrestling coach for Placer High School and completed the length of his seasonal sport contract. The District Board approves coaching contracts. These Personnel Action Form ("PAF") contracts are for a "season of sport" and therefore span shorter timeframes than a full-time annual contract. Using the PAF, the District hires coaches as temporary employees and seasonal contracts are terminated at the end of each season. This procedure requires the District Board to annually approve seasonal sport contracts.

The Associated Teachers of Placer's collective bargaining agreement ("CBA"), which existed prior to the date Trustee Spaid's assumed position, applies to all coaching members. Coaches are paid according to the District's Extra Compensation Salary Schedule, which determines the amount of each stipend and how much compensation the coach could receive. Coaching stipends vary based on the level of coaching provided and the years of coaching service provided to District.² You provided the District's Extra Compensation Salary Schedule, effective July 1, 2022, as approved by District Board.

Mr. Spaid has been seasonally employed by the District as a head wrestling coach for 3 years prior to the Board member Spaid's election. He entered into three consecutive contracts or three "seasons of sport" with the District as follows: 1) JV Head Wrestling Coach from May 10, 2021 through June 30, 2021 for a stipend of \$3,222; 2) JV Head Wrestling Coach from November 1, 2021 through February 11, 2022 for a stipend of \$3,415 plus \$663 for playoffs; and 3) Girls Head Wrestling Coach from October 31, 2022 and through February 10, 2023 for a stipend of \$4,598 plus \$1,839.20 for playoffs.

The District Board will need to approve another PAF to renew Mr. Spaid's contract as a head wrestling coach for next season. The terms of compensation are not contained in the PAF; rather they are outlined in the District's Extra Compensation Salary Schedule.

ANALYSIS

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

² According to the Salary Schedule, the playoff stipend for coaches is 10% of current extra compensation for each week of required additional service.

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. (*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).)

Here, Trustee Spaid would have a financial interest, for purposes of Section 1090, in any contract that financially benefits her spouse under community property laws, and she would be considered as 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 83 Ops.Cal.Atty.Gen. 246, 248 (2000); 78 Ops.Cal.Atty.Gen. 230, 235-237 (1995).) 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 *City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 515; 78 Ops.Cal.Atty.Gen. 362, 369-370 (1995).)

You have specifically inquired about the applicability of the noninterest exception under Section 1091.5(a)(6), which provides that a public officer has a statutory noninterest in a spouse’s employment if the spouse’s employment “has existed for at least one year prior to [the officer’s] election or appointment.”

In 69 Ops.Cal.Atty.Gen. 255 (1986), the Attorney General considered whether “employment” for purposes of qualifying under the terms of Section 1091.5(a)(6) could include the spouse’s transfer to a different type of employment with the public agency. In concluding that the employment must remain the same before and after the election or appointment, the opinion looked to the purposes of the statute:

We believe that the Legislature, in enacting subdivision (a)(6), recognized that the original employment contract with the employed spouse would have been made by a prior, disinterested officer or board. Accordingly, to permit a continuation of the same employment would involve little risk to the public interest despite (1) the fact that the other spouse would subsequently have a financial interest therein and (2) the fact that the other spouse, or a board upon which he or she served, might

be required to take actions with respect to that employment (e.g., ... renewing the contract of a tenured teacher). We additionally believe that the one year threshold requirement of the exception was placed therein to prevent the possibility of any influence by the spouse who would subsequently assume the interested office or employment.

(*Id.* at p. 258.)

That 1986 opinion was relied upon in *Thorpe, supra*, 83 Cal.App.4th at p. 655 where the court determined that “the intent of section 1091.5, subdivision (a)(6), is to continue the status quo as to a spouse already employed for over a year, but to prohibit the spouse’s employment in a different position that requires approval of the Board of Trustees of which the employee’s spouse is a member.” Therefore, changes such as “a pay increase ... a new title, a new job description, substantial additional duties, and movement from a classified position in a bargaining unit to a supervisory position without a bargaining unit” indicate new employment to which the noninterest under Section 1091.5(a)(6) does not apply. (*Ibid.*)

For example, the 1986 opinion addressed whether Section 1090 would prohibit the spouse of a school board member from continuing her annual employment as a substitute teacher or being appointed to a different employment position with the school district within the context of the application of Section 1091.5(a)(6). (69 Ops.Cal.Atty.Gen. 255, *supra.*) There, the opinion concluded that Section 1090 would not prohibit the employed spouse from continuing annual employment as a substitute teacher, *which requires a new contract each year*, because the legislative intent of the exception is to permit a continuation of the status quo with respect to the spouse’s employment. However, the opinion further concluded that changing employment positions (e.g., becoming a permanent employee) would be prohibited because the status quo would be disturbed by the new position. (*Ibid.*)

Therefore, if an employee’s title, job description, rights, duties, responsibilities, and compensation remain the same after their spouse’s election or appointment to office, a new employment contract may be executed as long as the employee has held that same job for over a year prior to the election or appointment.

Here, Trustee Spaid’s spouse has been continuously employed on a seasonal basis by the District as a head wrestling coach since 2021, more than one year prior to Trustee Spaid’s election to the District Board, which has approved the spouse’s PAF for each new season. Similar to the substitute teacher in the 1986 Attorney General opinion, the District Board will need to approve another PAF to renew her spouse’s contract as a head wrestling coach for next season. There is no suggestion from the facts that his title, job description, rights, duties, responsibilities, or compensation to which he is entitled, will be different from previous seasons.

Accordingly, Section 1091.5(a)(6) applies to allow Trustee Spaid to take part in, and the District to enter into, the seasonal contract between the District and her spouse.

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

JW:aja