



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

February 1, 2024

Neal Latt  
Division One Director  
Humboldt Bay Municipal Water District  
828 Seventh St  
Eureka, CA 95501

Re: Your Request for Advice  
**Our File No. A-23-107<sup>1</sup>**

Dear Mr. Latt:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.<sup>2</sup> Please note that we are only providing advice under the Act and Section 1090, 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 Humboldt 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

In your capacity as the Division One Director and president of Humboldt Bay Municipal Water District (“HBMWD”) Board of Directors, are you prohibited under the Act or Section 1090 from participating in the decision regarding the Blue Lake Rancheria’s (“BLR”) request for a new wholesale water connection from a HBMWD water line due to your employment as Chief Judge of the BLR Tribal Court?

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<sup>1</sup> Please note that this letter is a corrected version of the letter originally issued on July 17, 2023, which contained two erroneous references to Section 1091(b)(13).

<sup>2</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

You have a prohibited financial interest in the contract decision under the Act, because BLR, a source of income, is a named party and subject of the decision. Under Regulations 18701(a) and 18702.3(a)(1), it is reasonably foreseeable that the decision will have a material effect on BLR. Under the Act you may not participate in the decision, and you must follow the recusal requirements noted below.

Additionally, as a member of the HBMWD Board of Directors, you are subject to the prohibitions under Section 1090 regarding this contract decision. Your interest in your salary from BLR falls under the 1091.5(a)(9) definition of a “noninterest,” because BLR is a government entity and the decision does not involve your particular department, the BLR Tribal Court. Therefore, while your participation is barred under the Act, the HBMWD Board of Directors may enter into the contract so long as you disclose your interest to the Board at the time of consideration of the contract, and your interest is noted in the Board’s official record under the requirements of Section 1091.5(a)(9).

## FACTS AS PRESENTED BY REQUESTER

You hold the elected office of Division One Director and president of the HBMWD Board of Directors, a state Special District whose main office is in Eureka. In June 2023, Blue Lake Rancheria (BLR), a federally-recognized Indian Tribe, requested the establishment of a new wholesale water connection to BLR from a HBMWD water lateral line. HBMWD staff is currently appraising the legality and feasibility of the proposed connection. In the event that the proposed connection is legal and feasible, it will be returned by staff as an agenda item, requiring a majority vote of a quorum of the five HBMWD directors to be approved. You confirmed by email that, if approved, the proposed mainline extension waterline connection between BLR and HBMWD will be a contract agreement.

Your day-to-day employment is as an attorney and principal of the Latt Law Group. You also serve as Chief Judge of the BLR Tribal Court, which generally requires one day or less per month presiding (most often by videoconference) as a tribal court judge. You hear matters that typically pertain to alleged infractions of BLR tribal ordinances. As Chief Judge of the Tribal Court, you adjudicate cases in which the BLR tribe may be itself a party, either directly (as a defendant) or indirectly (for citations issued by BLR tribal police), requiring you to hear evidence and issue rulings that may be either for, or against, the BLR. Your compensation is hourly and is paid by the BLR, similar to the wages of state superior court judges.

## ANALYSIS

### The Act

The Act’s conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official’s financial interests distinguishable from the decision’s effect on the public generally. (Sections 87100 and 87103.) 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:

An interest in a 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).)

Section 82030(b)(2) excludes salary or benefits from a “state, local or federal government agency” from the definition of “income.” However, other payments from a government entity that are not related to salary or benefits by a state, local, or federal government agency are not excluded from the definition of “income,” such as payments received by an official from a foreign government. (See *Stirling* Advice Letter, No. A-85-045.)

As a threshold issue we determine that your income from the BLR meets the definition of income and is not excluded under any exception. While we have previously advised that an Indian or Native American Tribe is a “government” or a “governmental authority” (see *Battersby* Advice Letter, No. A-98-176, citing *United States v. Wheeler* (1978) 435 U.S. 313, 322-323), we have determined that it is akin to a sovereign national government and the exception in Section 82030(b)(2) does not apply. (See for example, *Santana* Advice Letter, No. A-01-002.) As a result, the “state, local or federal” government salary exception does not apply to salary received from a Tribe. You have a source of income interest in BLR due to your Tribal Court wages to the extent you receive \$500 or more in the 12 months prior to the decision.

### **Foreseeability and Materiality**

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. (Regulation 18701(a).) BLR is the named party and subject of the decision.

Looking to the Regulation 18702.3 materiality standards for a source of income interest, Regulation 18702.3(a)(1) provides that the reasonably foreseeable financial effect of the decision on the financial interest is material where the source of income is the applicant or contracting party to the decision. While Regulation 18702.3 has a particular provision regarding “government entities” as a source of income, it does not appear applicable to a sovereign national government entity. Regulation 18702.3(d) states:

Where a government entity qualifies as a source of income as defined in Section 82030, including where a public official is paid by the entity as a consultant or contractor, this Regulation does not apply. Under Regulation 18703(e)(7), an official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on the official.

Regulation 18703, interpreting when a decision’s effect on an official’s financial interest is deemed indistinguishable from the decision’s effect on the public generally (and thus not a prohibited interest) provides a specific rule for matters involving government entities. However, Regulation 18703(e)(7) states that the effect of the decision is indistinguishable, where the “decision affects a federal, state or local governmental entity in which the official has an interest.” As noted above, past advice letters state that a Tribe is not a federal, state or local government. Due to the limitation of application in Regulation 18707(e)(7), we interpret Regulation 18702.3(d) as applicable only to federal, state, or local government entities as well and apply the standard in Regulation 18702.3(a)(1).

Because your source of income interest, BLR, is a contracting party to the decision, it is reasonably foreseeable that the decision will have a material effect on your interest pursuant to Regulation 18702.3(a)(1). Therefore, you have a prohibitive financial interest in the mainline extension waterline connection decision between BLR and HBMWD. You may not participate in the decision and must recuse yourself in accordance with Regulation 18707, by publicly identifying your source of income interest prior to the agenda item, leaving the room and refraining from any participation in the decision.

## Section 1090

Generally, Section 1090 prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Under this section, 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 and the prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 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 precluded from entering into the contract. (*Thomson, supra*, at pp. 647- 649; *Stigall v. City of Taft* (1962) 58 Cal.2d 565 at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

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. Vallergera* (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).) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*People v. Honig* (1996) *supra*, at p.333.) 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, supra* at p. 569.)

The Legislature has created various statutory exceptions to Section 1090’s prohibition where the financial interest involved is deemed to be a “remote interest,” as defined in Section 1091 or a “noninterest,” as defined in Section 1091.5. If a remote interest is present, the contract may be made if: (1) the officer discloses the interest in the contract to his or her public agency; (2) that interest is noted in the agency's official records; and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a).) If a noninterest is present, the contract may be made without the officer’s abstention, and a noninterest generally does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

As a member of the HBMWD Board of Directors, you are a public officer subject to Section 1090’s conflict of interest provisions, this decision involves a contract between HBMWD and BLR, and you have a financial interest in BLR as your employer and source of income. The determinative question, therefore, is whether you have a financial interest in the contract between those two entities, and if so, whether the interest is a “remote” or “noninterest” as defined in Section 1091 and 1091.5, such that the HBMWD Board may enter into the contract.

The Legislature has addressed the issue of a public officer's involvement in a contract between two government agencies, where the public officer serves as a member of a body or board contemplating a contractual relationship and is employed by a separate government entity, and defined circumstances where the interest may be deemed a “noninterest” or a “remote” interest.

Under Section 1091(b)(13) a public officer has only a “remote interest” where the interest is “[t]hat of a person receiving salary, per diem, or reimbursement for expenses from a government entity.” Additionally, under Section 1091.5(a)(9) a public officer has only a “noninterest” where the interest is:

That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government 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.

We note that the Legislature uses the term “government entity” in both the above sections addressing a government salary interest, in contrast to the Act’s more specific language limiting the government salary exception to salary “received from a state, local or federal government agency.” There appear to be no Attorney General opinions or case law that interpret Sections 1091(b)(13) or 1091.5(a)(9)’s use of the term “government entity” to narrowly apply to state, local or federal government entities and not to foreign or sovereign national government entities. Additionally, where the Legislature has intended a limitation to a particular type of government entity in the context of defining a remote or noninterest, it has done so. For example, the remote interest defined in Section 1091(b)(3) is limited to an officer of a “local public agency located in a county” of a particular size. The noninterest defined in Section 1091.5(a)(4) is limited to an officer that is a landlord or tenant of the contracting party if the contracting party is:

the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state . . .

Therefore it appears appropriate to apply the noninterest in Section 1091.5(a)(9) to these facts. As discussed above, the BLR is a government entity. The contract at issue involves the BLR, and there is no indication from the facts that it directly involves the BLR Tribal Court, the department that employs you as Chief Judge. Therefore, we advise that for purposes of Section 1090, you have a noninterest in the mainline extension waterline connection decision between BLR and HBMWD under Section 1091.5(a)(9). For purposes of Section 1090’s prohibitions, the HBMWD Board of Directors is not prohibited from entering into the contract due to your interest. Under the Act you may not participate in the contract decision, and under the Act’s recusal and Section 1091.5(a)(9) requirements you must disclose your interest to the HBMWD Board at the time the contract is considered, your interest must be noted in its official record, you must leave the room and not participate in the decision.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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