



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

August 22, 2025

Stacey Lauman, Manager
Michael Scott, M.P.A.
City of San Rafael
Economic Development Program
1400 5th Avenue
San Rafael, CA 94901

Re: Your Request for Formal Advice
Our File No. A-25-105

Dear Mr. Scott:

This letter responds to your request for advice on behalf of the City of San Rafael (“City”) 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.

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. Finally, the Commission is not authorized and does not provide advice concerning past conduct. (Section 1097.1(c)(2) and Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

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 Marin 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 City funds from being awarded to three Downtown San Rafael Business Improvement District (“BID”) Advisory Board Members for façade improvement, public art, and beautification through a Request For Proposals (“RFP”) process, due to the fact that there is some

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.

overlap between the BID and the Downtown San Rafael Arts District (“DSRAD”) Stakeholder Group, which awards the art grant?”

CONCLUSION

No. Section 1090 prohibits a public official from having a financial interest in any contract made by them in their official capacity, or by any body or board of which they are members. Section 1090 does not prohibit this award because the BID Advisory Board is not the entity making the grant award and did not participate in the decision. These decisions were made by the DSRAD Stakeholder Group steering committee. Moreover, based on the information provided, neither the BID Advisory Board nor the three selected Board members participated in any manner in the grant RFP process or award decisions. Under these facts, Section 1090 does not prohibit DSRAD from awarding the grants to the three eligible BID Advisory Board members.²

FACTS AS PRESENTED BY REQUESTER

Downtown San Rafael Business Improvement District (“BID”)

The BID is a City program that levies assessments against the area businesses to fund services or improvements to benefit those businesses. Specifically, the City established the BID under the 1989 state law and local ordinance to allow the City to collect assessments on approximately 700 businesses operating within the BID boundaries. These are the BID members. The revenues are to be used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses.

The City Council appoints a BID Advisory Board from members who own or represent a business in the BID or are voluntary members. The BID Advisory Board administers the affairs of the BID and reports annually to the City. It is a separate, standalone advisory board to the City.

The City has a contract with the San Rafael Chamber of Commerce (“Chamber”), a private, 501(c)(6) corporation, to provide management and enhancement services to the BID, and act as the fiscal agent of BID Funds. The “BID Director” is an employee of the Chamber.

City Art Grant for the Downtown San Rafael Arts District

The City was recently awarded grant funds by a state agency, the California Arts Council, for the Downtown San Rafael Arts District (“DSRAD”).³ The DSRAD consists of the following “Stakeholder Group:” the Chamber on behalf of the BID, the City, and four non-profit organizations.⁴ The City has a “pass-through agreement” with the Chamber to administer the art

² We do not advise on any local statement of incompatible activities that may apply to the BID Advisory Board, nor do we advise on the issue of incompatible offices. These are issues outside the Act's jurisdiction.

³ DSRAD is a state-designated cultural district by the California Arts Council.

⁴ Marin Society of Artists, Art Works Downtown, Youth in Arts, and the California Film Institute.

grant funds, which total \$709,890.⁵ The DSRAD, through its Stakeholder Group steering committee, allocated \$16,000 of the City's grant to fund a façade improvement matching grant program for art and beautification to businesses in the Downtown BID area. The façade improvement matching grant program was advertised and messaged broadly via email to the BID membership (businesses within the district), through newsletters to the memberships of local arts organizations, and by the City via Snapshot and socials.

The BID Advisory Board was not involved in the formation of the art grant RFP. You state that the BID Advisory Board was not consulted in any and had no role in the decision-making process. The BID Advisory Board is not a part of the DSRAD Stakeholder Group steering committee. The BID Director is on the steering committee and attends the Stakeholder Group meetings. Morgan Schaufler, a member of the BID Advisory Board, sits on the DSRAD stakeholder steering committee and is one of the active decision-makers at DSRAD; however, this is in her capacity as a staff member at Youth in Arts, a DSRAD nonprofit Stakeholder.

Four applications were submitted to the program, and three applications were found to meet the eligibility requirements as stated in the application form.⁶ The business owners related to all three eligible projects, Jeff Brusati, Temple Schauble, and Crytal Varga, are members of the BID Advisory Board. Proposals were reviewed by the DSRAD stakeholders at a regularly scheduled meeting in July 2025 and funds were provisionally awarded to the three eligible projects. There were no other eligible projects submitted for consideration. You confirmed that none of the three BID Advisory Board members eligible for the grant participated in the DSRAD decisions regarding the grant award. You clarified that the Chamber would not seek authority or report to the City or the BID on this grant award. The Chamber will issue grant funds that the DSRAD steering committee approved for funding through the DSRAD's regular monthly vetting process. No grant funds have yet been disbursed.

ANALYSIS

Section 1090

Section 1090 states that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” It further defines “district” as “any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.” This law generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is “concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from

⁵ According to the pass-through agreement, the City Manager may approve a disbursement if it does not exceed \$75,000, and the City Council's approval is needed if it is more than \$75,000.

⁶ You stated by phone that it was difficult logistically to find properties that would meet the requirements of the grant.

exercising absolute loyalty and undivided allegiance to the best interests of” their respective agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.)

A contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) 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.)

Section 1090 applies to members of advisory bodies, if they participate in the making of a contract through their advisory function. (*City Council v. McKinley*, (1978) 80 Cal.App.3d 204; 82 Ops.Cal.Atty.Gen. 126 (1999).) The term “contract” and “financial interest” are broadly interpreted by the courts and the Attorney General in Section 1090 matters. Grant agreements are generally considered contracts for purposes of Section 1090. (See, e.g., *People v. Honig*, *supra*, at p.350; and 89 Ops.Cal.Atty.Gen. 258, 260-262 (2006).) Similarly, the California Supreme Court explained what constitutes a financial interest under Section 1090:

[T]he term “financially interested” in section 1090 cannot be interpreted in a restricted and technical manner. (citation omitted.) The defining characteristic of financial interest is whether it has the potential to divide an official’s loyalties and compromise the undivided representation of the public interests the official is charged with protecting. (citation omitted.) Thus, that the interest “might be small or indirect is immaterial so long as it is such as deprives the [people] of his overriding fidelity to [them] and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good.” (citation omitted.)

(*Lexin v. Superior Court*, *supra*, at p.1075.)

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.) Significantly, Section 1090 reaches beyond the officials who actually execute the contract. Officials who participate in any way in the making of the contract are also covered by Section 1090.

The decisional law, therefore, has not interpreted section 1090 in a hypertechnical manner, but holds that an official (or a public employee) may be convicted of violation no matter whether he actually participated personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests.

(*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.)

Therefore, 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; see also *Stigall v. Taft*, *supra*, at p. 569.) When board members have the power to execute contracts, participation is constructive. Thus, where an official is a member of a board or commission that has the power to execute the contract, the member is conclusively presumed to be involved in the making of their agency’s contracts, irrespective of

whether the member actually participates in the making of the contract. (*Thomson v. Call, supra* at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen 49, *supra*.)

The RFP was formed, and the grant awards have been decided, but not funded. The three BID Advisory Board members applied for and were found eligible for the façade improvement matching grant program for art and beautification for businesses in the Downtown BID area. This decision is in the nature of a contract and will financially benefit the recipient Advisory Board members by improving the exterior of and providing an attraction to their respective businesses. Therefore, Section 1090 would prohibit the three members from entering into the grant agreement if they participated in the formation of the RFP in their official capacity.

However, the DSRAD grant award does not come before the BID Advisory Board for approval, nor does the BID Advisory Board have the power to execute the contract. And, despite the dual roles that certain officials have with respect to the various organizations, none of the three BID Advisory Board members at issue here had any involvement with the grant application process beyond applying for the grants in their private capacities.

As a result, the BID Advisory Board is not “making the contract,” and none of the three Advisory Board members participated in “making” the grant award in their official capacity. Therefore, even to the extent the BID Advisory Board members are officials subject to Section 1090, Section 1090 does not prohibit DSRAD’s award of the City’s grant funds to the three BID Advisory Board members, where they have not participated in the grant decisions, and there are no facts indicating that the officials had the opportunity to, and did, influence the RFP to promote their personal interests.

The Political Reform Act

We note that, with limited exceptions, Section 87100 prohibits a public official from making, participating in making, or using the official’s position to influence a governmental decision in which the official has a financial interest. This prohibition generally prohibits officials from making any communications to officials or employees of their agencies for the purpose of influencing any agency decisions.

We have previously advised that a business improvement district advisory board is a local government agency, and its members are public officials subject to the Act’s conflict of interest provisions, where the board possesses decision-making authority pursuant to Regulation 18700(c)(2). (*Alperin* Advice Letter, No. I-94-177 [where the BID advisory board is responsible for negotiating and entering into contracts to perform activities previously approved by the city council through the BID’s annual budget approval, it is making final decisions and meets the definition of a local agency, and the advisory board members are public officials under Regulation 18700.]. An advisory body generally has decision-making authority if it may make a final governmental decision or it makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency. (Regulation 18700(c)(2).)

However, because the decisions regarding the grants have already been made (except for the allocation of the awards), we do not further advise on the Act as the Commission does not

provide advice relating to conduct that has already occurred. Accordingly, we express no opinion on the application of the Act to the BID Advisory Board members or any potential violation of the Act in applying for the grant or discussing the grant with City officials or staff, including, but not limited to, the BID director and any BID Advisory Board member serving on the DSRAD stakeholder steering committee.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja