

# CLIENT NEWS BRIEF

## Two Cases Demonstrate the Reach of Government Code Section 1090: Criminal and Civil Penalties Await the Unwary Government Official

Two recent cases involving high profile public officials highlight the reach of Government Code section 1090. Government Code section 1090 prohibits conflicts of interest, self-dealing and corruption among public entity officials.

*Sweetwater Union School District v. Gilbane Building Company* (February 24, 2016) 245 Cal.App.4th 19, sprang from one of the largest political corruption scandals in San Diego County history, in which construction vendors provided gifts to school district board members as incentives for the award of construction management contracts. Among other things, vendor representatives paid for expensive dinners with District officials, provided tickets to entertainment and sporting events, paid travel expenses, and made contributions to political campaigns and charities in an effort to influence the District's award of construction management contracts. District board members and vendor representatives pled guilty to various crimes associated with this "pay to play" scheme.

The District sought to void three construction management contracts under Government Code Section 1090, and demanded that the vendors awarded those contracts disgorge all monies paid under the void contracts. In response, the vendors filed an anti-SLAPP motion challenging the District's Section 1090 claim. "SLAPP" refers to a "strategic lawsuit against public participation" -- that is, a lawsuit brought primarily to "chill", or prevent, the valid exercise of constitutional rights to challenge unlawful conduct. An "anti-SLAPP motion" refers to the procedural mechanism a defendant may use to challenge that "chilling" lawsuit as an alleged infringement of the defendant's free speech rights. A court faced with an anti-SLAPP motion must engage in a two pronged analysis. First, the court decides whether the defendant made a threshold showing that plaintiff's claim is one arising from protected activity. However, a defendant cannot meet this showing if its alleged protected activity is illegal as a matter of law. Second, if the defendant clears this initial hurdle, the court then analyzes whether the plaintiff has demonstrated a probability of prevailing. If the plaintiff meets that burden, the anti-SLAPP motion will be denied.

The trial court held that the vendors' anti-SLAPP motion could not meet the first element, finding that the conduct underlying the complaint was illegal as a matter of law.

On appeal, however, the *Sweetwater* court disagreed with the trial court's finding on the first element, concluding that the vendors could show that their claim arose from constitutionally protected activity, namely that making political contributions and lobbying government officials is a type of political speech. The appellate court also held that although the District introduced evidence that many of the individuals entered guilty or no contest pleas to certain criminal activity, none of the individuals pled guilty to Section 1090 violations. The *Sweetwater* court found that "while the evidence may establish that *some* of the conduct may have been illegal, the evidence does not establish that *all* of the conduct at issue was illegal as a matter of law."

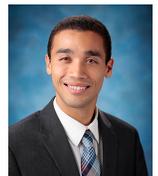
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(Emphasis in the original.)

The *Sweetwater* court next turned to the second element of an anti-SLAPP motion, finding that the evidence the District proffered confirmed that the District had a probability of prevailing on the merits of its Section 1090 claims. While there was no allegation that any official stood to gain economically from the contract performance, it was clear they had a financial interest in the relevant contracts as a result of activities that occurred during the contracting process and in the making of the contracts. For example, testimony of those convicted and testimony of other individuals knowledgeable of the facts showed that the gifts and contributions were made for the purpose of swaying District officials' votes in favor of awarding contracts to the vendors. Thus, one could reasonably infer from the chronology of campaign contributions and excessive gift giving, together with the award of the contracts, that the former District officials were influenced to award contracts to the vendors as a result of the gifts and contributions. Accordingly, because the District showed facts sufficiently demonstrating a probability of prevailing on its Section 1090 claims against the vendors, the District defeated the anti-SLAPP motion and the case continued.

**In another case involving Government Code section 1090**, a former school district superintendent in San Diego County recently pled guilty to a felony charge for bonuses he received tied to the approval and authorization of charter schools. Steve Van Zant served as the Superintendent of the Mountain Empire School District (San Diego County) from 2008 through 2013. Beginning in 2010, Mr. Van Zant's contract awarded him a stipend for each charter school that the District authorized. The stipend was equivalent to five percent of the revenue generated by the charter authorization. Once authorized, a handful of the charter schools subsequently hired Mr. Van Zant's private consulting firm to provide administrative services.

In January 2016, the San Diego District Attorney's office filed a felony charge against Mr. Van Zant alleging that his actions violated Government Code section 1090's conflict of interest provisions. While unwilling to provide specific details, the District Attorney noted that Mr. Van Zant violated section 1090 on or around May 12, 2010 (the date Mr. Van Zant's stipend incentive was adopted). On February 26, 2016, Mr. Van Zant pled guilty to the felony charge. As part of his plea agreement, Mr. Van Zant agreed to return the stipends he received for authorizing the charters, 5 years' probation, 300 hours of community service, and 30 days home confinement.

These two cases illustrate that seriousness of Government Code Section 1090's conflict of interest provisions, and demonstrate the very real potential of penalties for a violation. If you have any questions about these cases or Government Code section 1090, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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