

CLIENT NEWS BRIEF

Public Officials May Now Seek Advice From The Fair Political Practices Commission For Government Code Section 1090 Prohibited Contract Issues

When it comes to conflict of interest issues, there are numerous laws to which a public official must adhere. A new law will make it easier for such officials to seek advice on such issues, and will also expand the authority of the Fair Political Practices Commission (FPPC) to punish conflict of interest violations.

The Political Reform Act of 1974 (Gov. Code § 87100 et seq.; "Act"), established the FPPC. The Act governs disclosure of political campaign contributions and spending by candidates and sets rules for government officials limiting their ability to make decisions in which they are financially interested. In addition, Government Code section 1090 prohibits members of legislative bodies and certain government officials from having a financial interest in any contract made by them in their official capacity or by a body or board of which they are members. Under section 1090, covered officials cannot simply recuse themselves to avoid a violation; the body or board cannot enter into the contract at all (the Act does not include a similar prohibition). Contracts entered into in violation of section 1090's prohibition are void, and willful violations of the prohibition can subject a covered official to criminal prosecution.

Under existing law, covered officials may obtain protection, in the form of civil and criminal immunity from prosecution, by seeking written advice from the FPPC on issues that arise under the Act. The FPPC has historically refused to provide advice on section 1090 issues due to a lack of jurisdiction, and has instead deferred any such requests for advice to the Attorney General's Office.

New law, effective January 1, 2014, enacted under recently chaptered Assembly Bill (AB) 1090, allows the FPPC to issue an opinion or advice related to issues arising under Government Code section 1090 pursuant to a request from a covered official. Unlike an opinion issued regarding the Act, an FPPC opinion cannot provide immunity to a covered official for a section 1090 violation. The opinion can be used, however, as evidence of the covered official's good faith conduct in an enforcement proceeding.

In addition, AB 1090 gives the FPPC authority to bring administrative and civil actions against covered officials who violate section 1090. The FPPC may only commence such actions against the covered officials with the prior authorization of the district attorney in the county where the violation has occurred, and no administrative or civil action can be taken against a covered official who is already being criminally prosecuted for a section 1090 violation.

For further information regarding AB 1090, or for assistance with establishing and adopting policies and procedures relating to potential conflicts of interest, please feel free to contact one of our [eight 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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