

CLIENT NEWS BRIEF

Potential Felony Conflict of Interest? Attorney General Addresses Conflict of Interest Scenarios Involving Public Officers

The California Attorney General recently issued two opinions addressing the scope of California's conflict of interest statute relating to public officers. These opinions discussed Government Code section 1090, which prohibits public officers from participating in public contract decisions if they have a personal financial interest in any contract. This prohibition applies to public officers including members of school boards, community college district boards, city councils, and special district boards. While Attorney General opinions are advisory and not binding, they provide guidance and insight as to how a court could interpret various issues.

In the first opinion, the Attorney General found that Government Code section 1090 prohibits a city from obtaining services or products from a business in which a city council member has a 50 percent ownership interest, even if the council member disqualifies herself from any purchasing decisions. The proposed transaction was squarely within the conduct prohibited by Government Code section 1090 because the council member had a financial interest in the business' contracts. Therefore, the council member would be "financially interested" in contracts between the business and the city council. The Attorney General found that city staff are also prohibited from contracting with the council member's business, absent independent authority. Additionally, Government Code 1090 applied *despite* the council member's willingness to recuse herself and the lengthy history of business' prior transactions with the city. Finally, a necessity exception did not apply even though the business was the only one of its kind within the city boundaries. The Attorney General noted that other businesses in the general vicinity could provide the same products and services and that the increased costs or inconvenience did not negate the conflict.

In the second opinion, the Attorney General addressed several questions stemming from one factual scenario. A community college district board trustee is a retired community college president receiving the same health benefits as the district's current employees. The same trustee's spouse is a tenured professor employed by the community college district. These facts gave rise to several questions regarding potential conflicts of interest.

With regard to the trustee's spouse, the Attorney General found that the trustee could participate in collective bargaining related to his spouse's employment as a tenured professor so long as (a) the spouse obtained the position more than a year before the trustee took office, and (b) the collective bargaining agreement does not promote, reclassify, or hire the spouse. In this instance, Government Code section 1090 applies since a collective bargaining agreement is a contract and a board member is "financially interested" when a contract controls the salary or terms of a spouse's employment. Although Government Code section 1090 applies, an exception provides that an officer is not considered "financially interested" if the spouse is an employee of the public entity and the spouse's employment existed for a least a year prior to the officer's election or appointment. Here, the trustee's spouse was an employee of the community college district and had held her position for more than a year

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prior to the trustee's election. Therefore, this opinion makes clear that public officers may participate in collective bargaining agreements impacting their spouses if the agreement does not result in a new or different employment for the spouse and the spouse attained the position more than a year before the public officer takes office.

Addressing the trustee's health benefits, the Attorney General held that the trustee may not participate in the process of renegotiating current employee health benefits, when the trustee was receiving the same health benefits. The Attorney General reasoned that the trustee could not participate because of the trustee's personal financial interest in the level of current employee benefits. Here, there were no applicable exceptions from Government Code section 1090, including the "government salary" exceptions for a person receiving salary, per diem, or reimbursement for expenses from a government entity (this exception only applies to a public official's employment with *another* government agency seeking to contract with the body with which the public official is a member). In this instance, the trustee's interest in conserving district resources conflicted with his personal interest in greater health benefits. The Attorney General also pointed out that the board and district employees are on different sides of the collective bargaining agreement and have differing economic interests. Accordingly, the trustee was required to abstain from bargaining on this issue.

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