



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 10, 2022

Jeffrey G. Scott
General Counsel
Desert Healthcare District
16935 West Bernardo Dr, Suite 170
San Diego, CA 92127

Re: Your Request for Advice
Our File No. A-22-080

Dear Mr. Scott:

This letter responds to your request for advice regarding the Political Reform Act (“Act”) and Government Code Section 1090, et seq.¹ 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 Riverside 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

Under the Act and Section 1090, may Desert Healthcare District CEO Dr. Conrado Barzaga take part in the grant process with respect to grant applications submitted to the District by Vision y Compromiso, a nonprofit organization that employs his spouse?

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.

CONCLUSION

No, because the grant applications directly involve his spouse's employer—a source of income to Dr. Barzaga and his wife—Dr. Barzaga has a disqualifying financial interest under Section 1090 and therefore must entirely recuse himself from any part of the grant process involving Vision y Compromiso. Upon Dr. Barzaga's proper recusal, however, the District may still award a grant to Vision y Compromiso. Additional analysis with respect to the Act is therefore unnecessary.

FACTS AS PRESENTED BY REQUESTER

Dr. Conrado Barzaga works for the Desert Healthcare District ("District") as the District's CEO—a hired, nonvoting position separate from the District's voting body, the Board of Directors. The District is organized under the provisions of the California Health & Safety Code, Section 32000 et seq., to provide and support health care services within the boundaries of the District, which includes the communities in the Coachella Valley in Riverside County. The District has established an extensive grants program that provides financial support to non-profits and public agencies providing health care related services to the residents and communities throughout the Coachella Valley.

Vision y Compromiso ("VyC") is a 501(c)(3) nonprofit organization and member of the Coachella Valley Equity Collaborative. VyC's program of *promotores*² conducts outreach, education, and navigational support in assisting with recruitment, scheduling, and coordinating of vaccine events throughout the Coachella Valley, to help reduce the disproportionate impacts of the COVID-19 pandemic on underserved communities.

Dr. Barzaga's wife, Melinda Cordero-Barzaga, is an Associate Director and employee of VyC. Dr. Barzaga has not participated in the grant application process or in the decision whether to provide funding to VyC. The District has a separate grants staff that reviews and processes all grants, which are also reviewed by the District's Program Committee (consisting of less than a quorum of Board Members), who then makes recommendations to the full Board. All funding decisions are made by the District Board.

ANALYSIS

Under Section 1090, public "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 a member." 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 v. City of Taft* (1962) 58 Cal.2d 565, 569.) 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.) 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.) The making of a contract not only includes the execution of the contract, but also "the negotiations, discussions, reasoning, planning and give and take which goes beforehand . . ." (*Stigall, supra*, 58 Cal.2d at p. 569.) Grant

² According to VyC's website, "[p]romotores and Community Health Workers are liaisons (links) between their communities and health and social service providers."

agreements are generally considered contracts for purposes of Section 1090. (See, e.g., *Honig, supra*, 48 Cal.App.4th at p. 350; 89 Ops.Cal.Atty.Gen. 258, 260-262 (2006).)

Here, the primary issue is whether Dr. Barzaga, as the District's CEO, can avoid a Section 1090 violation by abstaining from all aspects of the making, implementation, and administration of a future grant between the District and VyC, where his spouse is employed as an Associate Director.³

Initially, we note that when Section 1090 applies to a member of a governing body of a public entity, the prohibition generally cannot be avoided by having the interested board member abstain from the decision. Rather, the entire governing body is precluded from entering the contract. (*Thomson, supra*, at pp. 647-649.) However, when an employee is financially interested in a contract, as here, the employee's agency is prohibited from making the contract by Section 1090 only if the employee was involved in the contract-making process. Therefore, if the employee plays no role whatsoever in the contracting process (either because such participation is outside the scope of the employee's duties or because the employee disqualifies himself or herself from all such participation), the employee's agency is not prohibited from contracting with the employee or the business entity in which the employee is interested. (See 80 Ops.Cal.Atty.Gen. 41 (1997); 85 Ops.Cal.Atty.Gen. 34, 36 (2002).)

Because Section 1090 already prohibits Dr. Barzaga from taking part in the contracting process whatsoever with respect to grants applied for and awarded to VyC, no further analysis under the Act is necessary provided Dr. Barzaga recuses himself from the decisions.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

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³ An official has an interest in the community and separate property income of his or her spouse. (*Nielsen v. Richards* (1925) 75 Cal.App. 680; *Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655; 89 Ops.Cal.Atty.Gen. 69 (2006).) Therefore, Dr. Barzaga would be financially interested in any contract between the District and VyC.