



1999 Harrison Street, 9th Floor
Oakland, California 94612
tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

Richard D. Pio Roda
Attorney at Law
rpioroda@meyersnave.com

March 22, 2021

Via E-Mail and Federal Express Delivery

Dave Bainbridge
General Counsel
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
advice@fppc.ca.gov

**Re: Request for Formal Written Advice
Director Steve Hill**

Dear Mr. Bainbridge:

I am the District Counsel for the Rodeo Hercules Fire Protection District (“District”). On behalf of Director Steve Hill, I submit to the California Fair Political Practices Commission a formal request for written advice pursuant to Government Code section 83114. Director Hill’s official mailing address is Hercules Station #76, 1680 Refugio Valley Road, Hercules, CA 94547. This request for formal written advice is regarding the application of the Political Reform Act and Government Code Section 1090 (“Section 1090”).

Factual Background

The District is an independent fire protection district organized and operated pursuant to the Fire Protection District Law of 1987, Health and Safety Code sections 13800 *et seq.* The District provides fire protection services to an approximately 32 square miles service area that includes the City of Hercules and the unincorporated town of Rodeo in western Contra Costa County. The District is governed by an elected five-person board.

The Contra Costa County Fire Protection District (“Con Fire”) is a dependent fire district governed by the Contra Costa County Board of Supervisors, acting in its capacity as the board of directors for Con Fire. The service area for Con Fire is approximately 304 square miles, which is primarily located in central Contra Costa County, but also includes portions of western and eastern Contra Costa County. Portions of the Con Fire service area are contiguous with the District’s boundaries, and the two agencies work closely together through mutual aid and other similar arrangements.

Director Hill was elected to the District's board in November 2018. Separate from his service on the District's board, Director Hill is employed by Con Fire. He currently serves as the Public Information Officer ("PIO") for Con Fire, a position he has held since March, 2018. Director Hill's employment with Con Fire is subject to Board of Supervisors' Resolution No. 2018/7 for county elected and appointed department heads, management, exempt, and unrepresented employees.

The District is currently exploring the possibility of consolidating with Con Fire. If consolidation is pursued, and approved by the Contra Costa County Local Agency Formation Commission, the District's territory would become part of Con Fire's service area and the District would cease to exist. Although the details of a potential consolidation of the District with Con Fire are still unknown, any consolidation would also result in some level of increased tax revenues, more employees, and a larger budget for Con Fire. Consolidation of the District and Con Fire will invariably change some aspects of Director Hill's job as Con Fire's PIO. For example, a larger service area likely means an increase in the number of emergency events that require a response from Con Fire's PIO. However, consolidation will not change the fundamental nature of Director Hill's employment position. Furthermore, consolidation will not directly result in a promotion or change of position for Director Hill, nor will it impact the salary and benefits received by Director Hill as part of his employment with Con Fire.

Question Presented

May Director Hill participate in discussions and decisions regarding the District's possible consolidation with Con Fire?

Analysis

Political Reform Act

Government Code section 87100 prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated financial interests. A financial interest includes a source of income aggregating to five hundred dollars (\$500) or more within 12 months prior to the time when the decision is made, as well as a public official's own personal finances. (See Gov. Code § 87103.)

Here, Director Hill does not have a potentially disqualifying source of income. The Political Reform Act defines "income" to exclude "[s]alary and reimbursements for expenses or per diem received from a state, local, or federal agency." (Gov. Code § 82030(a).) Accordingly, the compensation Director Hill receives from Con Fire is excluded from the Act's definition

of income and does not create a disqualifying conflict of interest that prevents Director Hill from discussing and voting on the District's potential consolidation with Con Fire. Furthermore, the District's potential consolidation with Con Fire will not change or otherwise alter Director Hill's salary, benefits, or position with Con Fire. Accordingly, the potential consolidation with Con Fire will also not have a reasonably foreseeable, material effect on Director Hill's personal finances. (*See* FPPC Regs. § 18702.5(b).)

Section 1090

Government Code section 1090 ("Section 1090") generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The term "financially interested" has been interpreted to have a broad meaning, and public officers are financially interested in a contract if they might profit from it in any way, directly or indirectly. (*People v. Honig* (1996) 48 Cal. App.4th 289, 333.) A public officer always has a financial interest in his or her source of income. While consolidation of the District and Con Fire may not include a written signed contract between the two agencies, consolidation will likely include different forms of mutual agreements between the two parties. Given the broad interpretation courts have applied to the term "contract" for the purposes of Section 1090, it is reasonable to conclude that the District and Con Fire's mutual consent to the consolidation process would qualify as a contract for the purposes of Section 1090.

The Legislature has identified certain financial interests as "remote interests" and "non-interests." If a public officer's financial interest is a "non-interest," the public officer may participate in decisions involving the proposed contract without abstention. (See Gov. Code § 1091.5.) If a public officer's financial interest is a "remote interest," the public agency may enter into the proposed contract, but the public officer must recuse him or herself from consideration of the item. (See Gov. Code § 1091.)

Government Code section 1091(b)(13) provides that a public officer that receives a salary, per diem, or reimbursement for expenses from another government entity has a remote interest in a contract between the two agencies. However, the public officer has a non-interest if the contract does not directly involve the "department of the governmental entity that employs the officer or employee." (Gov. Code § 1091.5(a)(9).) In this situation, Director Hill is employed by Con Fire, which is a special district with limited and specific duties, so any contract between Con Fire and the District necessarily involves the department that employs him. For this reason, the non-interest exception in Government Code section 1091.5(a)(9) is not applicable.

However, the courts have held that Section 1090 does not apply to contracts in which the public officer has no prospect of receiving a financial benefit, even if the officer has a financial interest in one of the contracting parties. "If the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract and any explicit legislative exemption for such a circumstance would be

unnecessarily redundant.”(*Eden Twp. Healthcare Dist. v. Sutter Health* (2011) 202 Cal. App. 4th 208, 227–28.) In that case, the court held that a public official had no Section 1090 conflict in a contract merely because he was the CEO of one of the contracting parties, because the contract would not have any direct or indirect impact on the official’s salary, benefits, or status as CEO. (*Id* at 815.)

Here, there is no indication that consolidation of the District and Con Fire will have any impact on Director Hill’s salary, benefits, or employment with Con Fire. Consolidation between the District and Con Fire would not result in any direct financial gain or loss to Director Hill, or a material change in his job duties. Accordingly, Director Hill does not have a Section 1090 conflict.

Request for Advice

We ask that you prepare an advice letter that confirms the above analysis that neither the Political Reform Act nor Government Code section 1090 prevents Director Hill from participating in discussions and decisions regarding the potential consolidation of the District and Con Fire.

If you need further information regarding this request, please do not hesitate to contact me at (510) 808-2000 or via e-mail at rpioroda@meyersnave.com.

Very truly yours,

Richard D. Pio Roda

RDP:AJM

3719233.1