



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

October 2, 2026

Jason M. Ewert
General Counsel
Bear Valley Community Services District
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**Re: Your Request for Advice
Our File No. A-26-038**

Dear Mr. Ewert:

This letter responds to your request for advice on behalf of the Bear Valley Community Service District regarding Government Code Section 1090, et seq (“Section 1090”).¹ Please note that we are only providing advice under 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.

Finally, the Commission is not authorized and does not provide advice concerning past conduct. (Section 1097.1(c)(2) and Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions under Section 1090.

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 Kern 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

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.

Does Section 1090 prevent the Bear Valley Community Services District (“District”) from amending its current lease agreement with the community’s private homeowner’s association, the Bear Valley Springs Association (“Association”), where the District’s Board Members are members of the Association due to their residential real property ownership?

CONCLUSION

Section 1090 does not prohibit the District from approving the lease agreement with the Association. The rule of necessity allows the approval of the Lease agreement between the District and the Association, which is an essential duty of the District -- a duty that only the District is legally capable of performing.

FACTS AS PRESENTED BY REQUESTER

Bear Valley Community Services District & Bear Valley Springs Association

Bear Valley Springs is an unincorporated gated community in Kern County, California. In 1970, the Kern County Board of Supervisors established the District to provide Bear Valley Springs residents with local government services, including the management and maintenance of mailboxes, water, wastewater, roads, gate operations, and police protection.² The District is governed by a five-person Board of Directors (“Board”), composed of registered voters in the District’s service area, elected to four-year terms. The District is one of only seven community services districts authorized by California law to limit public access to the district to landowners and residents.

Formed concurrently with the District, the Association is a private homeowners’ association encompassing all residential properties in the Bear Valley Springs community. The Association’s membership is exclusive to property owners and does not include renters, so not all residents of Bear Valley Springs are Association members. The Association has authority over all Bear Valley Springs residential lots and establishes rules governing access and the provision of recreational facilities through its Covenants and Restrictions. All current District Board Members are Association property owners.

The District’s jurisdiction overlaps the area covered by the Association and includes nonresidential land outside the Association’s boundaries. As a government agency, the District owns the roads and public infrastructure and is authorized to provide park and recreational services to the area residents. The District currently has a lease agreement with the Association in which it delegates to the Association the provision of park and recreational services for amenities owned by and located on District property. Under this agreement, the Association provides a number of park and recreational amenities to its members, including a golf course, equestrian center, recreation center (including a clubhouse, tennis courts, picnic areas, pool and

² The District is funded through special assessment line items on the annual county property tax bill, special taxes, portions of the ad valorem property tax levied on all taxable properties in the community, as well as water, wastewater, and solid waste billing.

locker room), trails, park areas (including campgrounds, overnight equestrian stops, rifle range, bike trails, and ponds), wilderness areas, lakes, and other community facilities – all of which are owned by and located on District property. The Association encompasses approximately 25,000 acres, which comprise Bear Valley Springs.

The Lease Agreement

The original lease agreement was entered into on October 12, 1970 (the “Original Lease”). The Original Lease lasted 10 years and was amended several times. It is your understanding that the District is not required to lease to the Association and that the District has the option to lease the facilities/property to other operators or to manage the area itself. Since then, the District and the Association entered into several new and amended lease agreements for the provision of recreational services on District-owned land (“Past Leases”). The current lease agreement was entered into on March 31, 2007, last amended on December 1, 2020, and is set to terminate in 2047 (the “Current Lease”). None of the current District Board members were a part of the creation or making of the Original Lease, any Past Leases, the Current Lease, or any amendment thereto.

Under the Current Lease agreement, the Association may access, use, and provide maintenance and operations of recreational services on District-owned land to the residents of the Bear Valley Springs Community. The District property subject to the lease is considered a “Common Area” under the property’s Covenants and Restrictions, and under those terms, access to the District property and its amenities is restricted to Association members - homeowners. As a result, some family members, renters, employees, guests, or visitors within the District do not have access rights to the District Property, unless accompanied or permitted by the homeowner. This exclusive benefit of access to recreational amenities, including, among others, a golf course, pool, parks, lakes, and equestrian center, increases the quality of life and arguably property values for property owners in the Association.

Furthermore, you state that, by being in the position to negotiate rent price terms, the current Board Members can arguably waive rent or negotiate low rent that, in turn, keeps Association annual membership fees low, which in turn keeps the annual fees of the Board Members, in their personal capacities as Association members, low as well.

In a follow-up email, you provided additional information regarding the Association's annual membership fees. The assessments on the properties within the development of the Association are relatively uniform. The Association’s Covenants and Restrictions confirm that assessments are the responsibility of the owners of residential lots, unimproved condominium lots, and condominiums on improved condominium lots within the Development. The Association’s Bylaws define members of the Association to be owners of residential lots, unimproved condominium lots, and condominiums on improved condominium lots within the development.

All District Board members are property owners required to pay assessments similar to any other owner of property within the District. Each property is assessed the same annual amount regardless of lot size or whether the lot is improved. The current FY 2026–2027

assessment is \$2,236 per property. Since each current District Board member is an Association member, each District Board member is subject to exactly the same per-property assessment as every other similarly situated Association member.

Prior to the April 25, 1996, lease agreement, the Association paid substantial rent in consideration for the right to use the property. However, in 1996, the District substantially reduced the rent in exchange for the Association taking over maintenance of the facilities. This practice has continued to the Current Lease, which requires the Association to “pay the District its actual costs for the annual premiums for the commercial property insurance required under Section 11 of this Lease and the sum of one dollar per year.” In turn, the Association’s maintenance of the District property prevents major increases in the annual recreational fees paid by Association members.

On September 26, 2025, the District sent the Association a notice of intent to terminate the Current Lease Agreement for the Association’s repeated violations of the lease’s terms and failure to cure. Willing to discuss terms for a new lease (“Future Lease”) that could resolve these violations going forward, the District offered to meet with the Association. Specifically, the Future Lease would seek to modify certain terms, including, but not limited to: terms of payment to the District for the right to use the property, adjust the District’s termination rights, and its ability to compel the Association to comply with numerous state and federal laws. Discussions about entering into a Future Lease Agreement occurred multiple times between September 2025 and February 2026.³

ANALYSIS

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is “concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of” their respective agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 (*Stigall*).)

Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the contract terms are fair and equitable to all parties. (*Id.* at pp. 646-649.)

³ As we cannot advise on past conduct, we express no opinion regarding any aspect of prior participation by District Board Members in any discussion concerning the Future Lease Agreement including but not limited the application of Section 1090 to these prior discussions, or the application of the Political Reform Act, which prohibits officials from making, participating in the making, or using their official position to influence a decision in which the official has a financial interest (Section 87100).

Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 239, citing *Stigall, supra*, at p. 569.) Importantly, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is typically precluded from entering into the contract. (*Id.*; see also *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

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.) Although Section 1090 does not specifically define the term financial interest, case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Rule of Necessity

In limited cases, the “rule of necessity” has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (*Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal. App. 3d 311, 322.) The rule has been applied where public policy concerns authorize the contract and “ensures that essential government functions are performed even where a conflict of interest exists.” (*Ibid.*; See also 69 Ops.Cal.Atty.Gen. 102, 109 (1986); 88 Ops.Cal.Atty.Gen. 106, 110 (2005).) “The rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so . . .” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1097.)

The rule of necessity has two facets: in procurement situations, it has permitted a government agency to acquire an essential supply or service despite a conflict of interest; in non-procurement situations, it has permitted a public officer to carry out the essential duties of the office despite a conflict of interest where the officer is the only one who may legally act. (65 Ops.Cal.Atty.Gen. 305, 310 (1982).) In non-procurement situations, the rule of necessity ensures that essential government functions are performed even where a conflict of interest exists. (*Ibid.*)

For instance, the “rule of necessity” has been applied to allow a school board to enter into a memorandum of understanding with a teachers’ association even when a board member is married to a tenured teacher and would have a financial interest in the contract. (69 Ops.Cal.Atty.Gen. 102 (1986).) Similarly, a community college board was allowed under the rule to negotiate with its faculty for salary and benefits even though a board member was a retired faculty member whose health benefits were tied to current faculty benefits. (89 Ops.Cal.Atty.Gen. 217 (2006).) In addition, a city councilmember who had an interest in a local cable franchise was allowed to use the rule of necessity to dispose of his interest where the city council was required to approve such disposition. (76 Ops.Cal.Atty.Gen. 118, 123-125 (1993).) And finally, in *Caminetti v. Pac. Mutual Life Insurance Co.* (1943) 22 Cal.2d 344, 366, the California Supreme Court held that the Insurance Commissioner may make contracts involving a

delinquent insurer in which he holds a policy, despite the prohibitions in the predecessor statute to Section 1090 (former Section 920), since “[n]o other officer is authorized to perform the commissioner’s duties . . .”

Thus, to determine if the rule of necessity applies, we must examine whether approval of the Lease between the District and the Association is an essential duty of the District, and whether the District is the only government entity legally capable of doing so. As mentioned, the District, as a government agency, owns the roads and public infrastructure and is authorized to provide park and recreational services to the area residents. Since its inception, the District has delegated to the Association the provision of park and recreational services for amenities owned by and located on District property. Under the terms of the Lease agreement, the Association pays the District annual rent and provides maintenance of the facilities, using money received through the assessment on property owners within the Bear Valley Springs Community. Under the Lease agreement, the Association may access, use, and provide maintenance and operations of recreational services on District-owned land to the residents of the Bear Valley Springs Community.

Based on these facts, the approval of the Lease agreement between the District and the Association is an essential duty of the District -- a duty that only the District is legally capable of performing. Accordingly, pursuant to the rule of necessity, the District may enter into the Lease agreement with the Association.

If you have other questions on this matter, please contact me at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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