



School Business Law Update

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ATTORNEY GENERAL OPINION FINDS BUSINESS PERSON SOLICITED FOR DONATIONS TO SUPPORTING FOUNDATION MAY LEASE LAND FROM PUBLIC ENTITY

The California Attorney General issued a March 28, 2005 opinion concerning a city council decision to lease land to a business owner who was solicited for donations to a nonprofit trust established by the city, where one city council member was a member of the nonprofit's board. The Attorney General opined that the affected city council member could participate in the decision, and that the transaction did not create a prohibited conflict of interest under Government Code section 1090 and following or under common law conflict of interest standards. (Opinion No. 04-502)

The City partnered with the National Park Service in establishing a nonprofit trust to benefit a park within the city's boundaries. A city council member served as one of the five directors of the nonprofit trust, all of whom served without compensation. The council member solicited contributions for the trust from a business person who later sought to lease land from the City. (The opinion does not state whether a donation was ultimately made.)

The Attorney General first examined the question in light of the Political Reform Act, Government Code section 81000 and following, and concluded that the council member was not required to abstain from the decision-making process, because the council member would have no financial interest in the company leasing the land, nor would the lease be a source of income to the council member.

With respect to Government Code section 1090, the opinion notes that a prohibited financial interest would prohibit not only the affected council member but the entire city council from voting on the matter. (Board action to approve a transaction in which one member has a prohibited financial interest results in a void contract and can lead to criminal sanctions). However, in this instance, the Attorney General noted that since the council member is not compensated for his services as a director of the nonprofit trust, even a large donation by the prospective lessee in response to the solicitation would not benefit the council member or any entity or property in which he had an interest. In addition, the Government Code has carved out a series of "safe harbors" describing specific situations which are not considered prohibited financial interests (Government Code section 1091). One of these interests was found to apply in this case. Where the public official's interest in the contract before the public entity is

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merely that of an uncompensated officer of a nonprofit, tax-exempt corporation which has as one of its primary purposes the support of the functions of the public entity, and this interest is noted in the public entity's records, a prohibited financial interest will not exist.

The Attorney General also found no conflict under the common law conflict of interest doctrine, since the council member had no personal stake in the lease.

This rationale would arguably apply to a situation in which an individual or business solicited for donations to an educational foundation supporting a school or community college district or county office of education seeks to transact business with the district/county office, where a board member or staff member serves on the nonprofit governing board in an uncompensated capacity. However, application of the law in this area depends heavily on the particular facts at issue, so districts are urged to consult with legal counsel if a similar situation presents itself.

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