



## School Business Law Update

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### ATTORNEY GENERAL FINDS CITY COUNCIL MEMBER HAD ONLY REMOTE INTEREST IN LEASE AGREEMENT WITH PRIVATE COMPANY/EMPLOYER

The California Attorney General issued a March 3, 2006, opinion concerning a city council decision to modify a lease agreement with a private water company where one city council member was employed by the water company as its regional manager, owned less than one percent of the stock of the company, was not an officer or director of the company, and had no involvement with the agreement. The Attorney General opined that the affected city council member had only a “remote interest” in the transaction, so that with disclosure and abstention from voting, the remainder of the city council could take action on the transaction. (Opinion No. 05-416)

Government Code Section 1090 prohibits making a contract in which a public official has a financial interest. The presence of a financial interest prohibits the entire board or body from acting on the transaction, not just the affected official. A contract made where a prohibited financial interest is present is void and unenforceable, even if the affected official abstains from voting. Therefore, if the city council member in this case had a prohibited financial interest in the lease with the water agency, the city council would be barred from acting on the proposed modification to the lease.

However, the Legislature also created safe harbors by defining certain relationships with the contracting party as only “remote interests” or “non-interests.” Where a remote interest is present, the board or body may act on the matter so long as the affected member discloses the financial interest to the board, has it noted in the official records, and abstains from any participation in the transaction and voting on the issue.

The Attorney General found that one remote interest was applicable in this case. Government Code Section 1090(b)(2) defines as a remote interest that of an employee or agent of the contracting party if that party has at least 10 other employees, the public official was an employee/agent of the contracting party for at least three years prior to initially accepting the office, owns less than three percent of the shares of stock in the contracting party, is not an officer or director of the contracting party, and did not directly participate in formulating the bid of the contracting party. Since all of these conditions were satisfied by the city council member, the Attorney General concluded that, so long as the council member properly disclosed his interest and refrained from participation in the transaction, the council could proceed to act.

The same principles would be applied to a contract between a school or community college board member and an entity in which the board member or employee has a prohibited financial interest. Remember also that a financial interest on the part of a board member or employee’s spouse or registered domestic partner will be treated as a financial interest of the board member. Finally, you should be aware that conflict of interest principles can also be applied to employees who have a financial relationship with a contracting party where the employee is involved in making a contract or advising the decision maker.

If you have questions concerning this opinion or topic, please contact me or the other members of our Business Practice Group.

—Grant Herndon

*School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*

