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LEGAL UPDATE

February 18, 2020

To: Superintendents, Member School Districts (K-12)
From: Jennifer Henry, Assistant General Counsel *J.H.*
Subject: California Supreme Court Weakens “Conflict of Interest”
Challenges to Public Contracts
Memo No. 07-2020

The California Supreme Court recently clarified that a taxpayer group lacks standing to challenge a public entity’s contract on “conflict of interest” grounds under Government Code Section 1092, although it stated that such a group could still make a challenge under the Civil Code. (*San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego* (2019) 8 Cal.5th 733).

Under Section 1090, government officials and public employees cannot be financially interested in any contract made by them in their official capacity or by any governing body, such as a governing board, of which they are a member. There are significant penalties for violating the conflict of interest laws, including criminal penalties and being “forever disqualified” from holding office in California.

In 2007, the City of San Diego issued bonds to finance the construction of its stadium Petco Park. In 2015, the City sought to refinance the remaining debt on those bonds. The financing team included both city employees and private organizations. Local nonprofit taxpayer group San Diegans for Open Government sued the City and its Public Facilities Financing Authority, challenging the bond refinancing. The taxpayer group alleged a conflict of interest violation in that at least one member of the financing team had a financial interest in the contracts for the bond refinance sale.

The California Supreme Court held that the language of Government Code 1092 only allowed a “party” – a signatory – of the contract to challenge the contract on conflict of interest grounds. However, it remanded the case back to trial court to allow the taxpayer group to bring the refinance challenge under the Civil Code. Additionally, the Supreme Court noted that conflict of interest violations



could also be prosecuted criminally, and the California Fair Political Practices Commission had authority to investigate, bring an administration action against, or sue, a violator of Section 1090.

This case is a reminder of the importance of staying up to date on California's conflict of interest laws. SCLS provides workshops on Section 1090 and conflict of interest issues, as well as many other topics. Please see <https://sclscal.org/workshops/> for more information.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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