



# ETHICS OFFICE MONTHLY REPORT

## TO BOARD OF DIRECTORS

Metropolitan Water District of Southern California

JULY 2017

### CONFLICT OF INTEREST LAW APPLIES TO CONTRACTORS, TOO



The California Supreme Court recently held that certain government contractors are subject to a state conflict of interest law traditionally applicable to government officials. California Government Code section 1090 prohibits government officials and employees from making, or participating in making, a government contract if they have a financial interest in the contract. Violations of section 1090 have severe consequences including voidance of the government contract involved. Intentional violations of section 1090 are criminally prosecutable.

#### *People v. Superior Court of Riverside County*

The case involved a physician who worked as an independent contractor for a public hospital. Dr. Hossain Sahlolbei influenced the hospital board to contract with a physician with whom he, unbeknownst to the hospital, had a pre-existing financial arrangement under the same contract. The lower court had held that section 1090 did not apply to Dr. Sahlolbei because he was an independent contractor - not a government "officer" or "employee" as stated in the statute.

The high court disagreed and for the first time expressly held that government contractors are subject to Section 1090 if they perform certain duties, including advising on public contracts. The Court explained that in recent years, government contracts have expanded, as has the role of the government contractor who may have influence on and control over public funds. "Section 1090 seeks to ensure that, to the extent the official has any responsibility to advise on how the public's money should be spent, the official's advice is independent of the official's own financial interests."

Government contractors are already expressly subject to other ethics regulations including the state's conflict of interest law prohibiting them from making, participating in making, or in any way attempting to influence government decisions in which they have a personal financial interest. Cal. Gov't Code section 87100. Many independent contractors are also required to report personal financial interests on state Form 700.

#### **Metropolitan Contractors**

The Ethics Office reviews and provides updates on evolving law in this area in part because Metropolitan contractors are subject to Metropolitan ethics rules, which are modeled after the state provisions noted above.

Metropolitan contractors are expressly prohibited from making, participating in making or attempting to influence any transaction, contract, grant, or sale to which Metropolitan is a party if the consultant, or the consultant's family member, has a financial interest in it. Administrative Code section 7105(b). Metropolitan rules also require contractors who make, or participate in making, governmental decisions to disclose personal financial interests on Form 700. The Board recently made the Ethics Office responsible for determining which contractors have duties that require personal financial disclosure and the scope of the disclosure.

The Ethics Office provides advice to Metropolitan officials and contractors related to these obligations and will continue to monitor and keep directors apprised of developments in this area.

## PROJECTS & INITIATIVES

The Ethics Officer and staff remain engaged in several projects and initiatives for review, analysis, and evaluation.

Continuing this month:

- ⇒ Review of Investigation Guidelines and Processes
- ⇒ Collaboration with Human Resources and Information Technology on implementing new Conflict of Interest Code
- ⇒ Finalizing Online Form 700 training course for new filers
- ⇒ Evaluation of Proposed Administrative Code Revisions in the following areas:
  - ◇ Ethics Office referrals
  - ◇ Ethics Office's access to records and resources in investigations
  - ◇ Publication of investigation findings
  - ◇ Schedule of recommended penalties, as per SB 60

## ADVICE & ASSISTANCE

The Ethics Office provides advice, educational materials, and other assistance to any director, officer, employee, or contractor regarding application or interpretation of Metropolitan's ethics rules and policies. Absent unusual circumstances, the Office provides its advice in writing.

The Ethics Office can provide advice only prospectively, i.e., about future activities. If it becomes apparent that a request for advice or other assistance concerns events that have already occurred, it might be necessary to review the matter as a potential violation.

In July 2017, the office provided analysis and advice in the following areas:

- ◆ Conflicts of interest
- ◆ Outside employment
- ◆ Gifts
- ◆ Financial disclosure

<i>Matters Addressed FY 2016-17</i>	<b>FY 16/17</b>	<b>Jul 2017</b>	<b>Aug 2017</b>	<b>Sep 2017</b>	<b>Oct 2017</b>	<b>Nov 2017</b>	<b>Dec 2017</b>	<b>FY 16/17</b>
<b>Ethics Complaints</b>								
Abuse of Authority	9	1						1
Campaign Contributions	0							
Conflict of Interest	7							
Discrimination	0							
Economic Disclosure	1							
Gifts	0							
Misleading Associations	0							
Nepotism	0							
Outside Employment	5							
Outside Scope of Ethics Office	4							
Revolving Door	0							
Whistleblower Protection	4							
<b>Total Complaints</b>	<b>30</b>	<b>1</b>						<b>1</b>
<b>Ethics Advice Questions</b>								
Abuse of Authority	0							
Campaign Contributions	1							
Conflicts of Interest	39	2						2
Economic Disclosure	57	1						1
Gifts	21	1						1
Misleading Associations	0							
Nepotism	4	1						1
Outside Employment	2	1						1
Outside Scope of Ethics Office	3							
Public Inquiries	0							
Revolving Door	1							
Whistleblower Protection	0							
<b>Total Questions</b>	<b>128</b>	<b>6</b>						<b>6</b>
<b>Combined Total</b>	<b>158</b>	<b>7</b>						<b>7</b>