Government Code Sec. 1090’s Prohibition On Conflicts Of Interest In The Making Of Public Contracts Applies To Independent Contractors.

Karen Christiansen was employed as Director of Planning and Facilities for the Beverly Hills Unified School District. In 2006, Christiansen lobbied District officials to change her position from an employee to an independent consultant and entered into a new three-year contract with the District, which terminated her status as an employee. Subsequently, Christiansen formed Strategic Concepts, LLC, of which she was the sole owner.

Christensen’s contract purported to limit her compensation at $170,000 per year, but the District approved and paid Strategic’s invoices in the following amounts: $253,520 in 2006; $1,313,035 in 2007; and $1,390,804 in 2008 without alerting the Board about the over-payments. The invoices simply appeared on the Board’s “consent calendar” and as such were items that the Board did not review on an individual basis.

Prior to the end of her first contract, Christensen negotiated a new contract in 2008 that provided for compensation per an hourly rate schedule and provided retroactive payment in an amount not to exceed $950,000 for services performed between January 1 and June 30, 2008. The new contract also contained a termination clause that allowed the District to terminate Christensen’s employment without cause but required 120 days’ notice of termination and termination fee equal to three months’ payment.

In Spring 2008, Christiansen strenuously advocated for a new school bond issue and spoke directly to the Board about the issue. Christiansen also recommended that her contract be amended to include management of the project funded by the bond. The Board approved placing the bond issues on the November 2008 ballot and Christiansen’s requested a contract amendment, which directed an additional $16 million dollars to Strategic. Voters approved the bond measure, and between November 2008 and August 2009, Strategic collected more than $2 million in management fees even though no specific project had been approved.

A new Interim Superintendent became concerned about the amount of money being paid to Strategic without an approved project. The Board subsequently met to consider the matter with legal counsel who advised that Strategic’s contracts with the District were void under Government Code section 1090 for conflicts of interest. The same day, the District ordered Strategic to vacate the District’s premises.
Christiansen and Strategic brought a lawsuit against the District seeking a declaration that the contracts were not void under California’s conflict of interest laws, including section 1090, or due to the failure to comply with public contracting laws.

The trial court held that Strategic’s contracts did not violate Government Code section 1090 and that the claimed violation of that statute was not a legally valid ground for voiding the contracts. As a result, the trial court ordered the District to pay Strategic $20,321,169. The District appealed.

Christensen argued that she did not violate section 1090 because she was simply negotiating her own compensation, but the Court of Appeal was unconvinced. In its opinion, the Court of Appeal cited People v. Superior Court (Sahlolbei) (2017) 3 Cal.5th 230, which was pending when the trial court made its original ruling. In that case, the California Supreme Court concluded the term “employees” as used in Government Code section 1090 is “intended to include outside advisors with responsibilities for public contracting similar to those belonging to formal employees, notwithstanding the common law distinction between employees and independent contractors.” The Supreme Court stated that if Government Code section 1090 exempted independent contractors, an official “could manipulate the employment relationship to retain ‘official capacity’ influence, yet avoid liability under section 1090. (People v. Superior Court (Sahlolbei), supra, at 243.).

This scenario is illustrated by the facts of Christiansen. Specifically, the Court of Appeal pointed to Christensen’s lobbying to move from employee to independent contractor status then using her influence to obtain a $16 million no-bid contract, which it held as a clear violation of section 1090.

The Court of Appeal reversed the trial court’s decision and instructed the trial court to conduct further proceedings consistent with its opinion.


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