

CLIENT NEWS BRIEF

Another Court Rules that Consultant Contracts May be Void Due to Conflict of Interest

A school district consultant's services agreements may be void under Government Code section 1090, even though the consultant is not an officer or employee of the school district. Section 1090 prohibits conflicts of interest in the making of public contracts. In *Strategic Concepts, LLC v. Beverly Hills Unified School District*, the court ruled that a consultant's status as an independent contractor rather than an employee did not exempt her from the law's reach. The trial court will now consider whether section 1090 was in fact violated.

Background

This case is the latest chapter in the saga involving this school district and consultant. The consultant was originally an employee who became an independent contractor, performing essentially the same work for more pay. She was criminally prosecuted after using her independent contractor-consultant position to obtain millions of dollars in school district contracts for her company. The consultant was criminally convicted of violating section 1090, but in 2013 her conviction was overturned by an appellate court in *People v. Christiansen* because she was not an employee of the school district when the misconduct took place. A later California Supreme Court case, *People v. Superior Court (Sahlolbei)*, overruled the reasoning for the holding in *Christiansen* and extended section 1090 criminal liability to independent contractors. ([See 2017 Client News Brief No. 40.](#)) However, no further criminal action was taken against the consultant because her conviction was overturned prior to *Sahlolbei*.

After her conviction was overturned, the consultant sued the school district on behalf of her company, Strategic Concepts, for breach of contract because the district declared the contracts void under section 1090 and refused to honor them. The district countersued to recoup the money that had been paid to Strategic Concepts under the allegedly void contracts. The trial court instructed the jury that section 1090 was not violated and the contracts between the school district and Strategic Concepts were not void. The jury awarded the previously convicted consultant \$13,710,509 in damages, and the trial court added interest and attorney's fees to bring the total judgment against the district to more than \$20 million.

In reversing the trial court's ruling, the appellate court noted that the trial court relied on the *Christiansen* decision to find that section 1090 did not apply to an independent contractor. However, *Sahlolbei* expressly overruled *Christiansen* and the basis for the trial court's decision. Based on the Supreme Court's ruling and reasoning, the appellate court reversed the trial court decision and adopted the reasoning of *Sahlolbei* that section 1090 did not exclude independent contractors for civil cases.

Section 1090 Casts a Wide Net

The scope of section 1090 is extremely broad. *Strategic Concepts* follows other

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recent California decisions that apply section 1090 to non-employees who inappropriately influence public entities to enter into contracts in which they have a financial interest. (See [2015 Client News Brief No. 30](#), [2016 Client News Brief No. 29](#), and [2017 Client News Brief No. 23](#).) As the California Supreme Court stated in *Sahlolbei*, section 1090 was intended to “include outside advisors with responsibilities for public contracting similar to those belonging to formal employees.” The law is now clear that section 1090 can apply to independent contractors, and not just elected officials, officers, and employees, in both criminal and civil contexts.

The *Strategic Concepts* court relied on the California Supreme Court’s recent ruling that a violation of section 1090 does not require actual dishonesty or fraud or an actual loss to the public agency. The key factor is the financial interest of the official, employee, or independent contractor.

Takeaways

- Section 1090 applies to employees and non-employees, such as independent contractors, consultants and vendors.
- Violations of section 1090 can result in a contract being void.
- A contractor will have to return any money or benefits received under a void contract in the event of a section 1090 violation.
- Public agencies must be mindful of section 1090 when entering into contracts with an individual or business where the individual or business is serving in a role similar to an agency employee and where the individual or business has influenced the making of the contract, particularly where a prior or ongoing relationship exists between the individual or business and the agency.

If you are interested in more information about the *Strategic Concepts* ruling or have any questions regarding conflicts of interest and section 1090, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).