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Public Agency Not Subject to 60-Day Limit

California Appellate Court Finds Contract Void Under Government Code Section 1090



Claims by a public agency seeking a court's help in undoing a contract, because one of the parties to the agreement had a conflict of interest, are not time barred, a California appellate court has ruled. The 60-day validation statute does not apply, but, rather, the Government Code section that authorizes a four-year

period for an interested party to bring suit to void a contract made in violation of the law does.

Two public agencies and a water company in Monterey County entered into a series of agreements to collaborate on a water desalination project. As the final agreement was being considered for approval by the Monterey County Water Resources Agency, one of its directors revealed for the first time that he had had a consultant agreement with the business that was selected as the project General Manager and was paid to advocate for the agreements. The director resigned and was later convicted of a felony violation of Government Code section 1090, a willful violation of the law.

More than two years later, California-American sued Monterey and the other water agency, Marina Coast Water District, to have the contracts declared void under section 1090. Eventually, Monterey filed a cross-complaint also seeking to have the agreements declared void under section 1090. Marina, alone, sought to "defend" the contracts by contending that the section 1090 claims were time barred because no party had sought to have the contracts declared void within 60 days of their execution as required by the validation statutes.

Government Code section 1090 is the powerful anti-conflict of interest statute that declares that any contract made by a government entity in which a member of the board or council of the entity has a financial interest is void. A related statute, section 1092, authorizes an interested party to bring suit to have a contract made in violation of the law voided, and provides a four-year period to bring such a lawsuit from the time of the discovery of the conflict.

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A quite separate group of statutes create a process known as “validation.” Under these validating proceedings (CCP § 860 et seq.), a public agency may file a legal action to have a court determine the validity of any matter enacted by the agency. The validation process has a 60-day window and, even if the agency does not file an action seeking validation, a challenge must be filed within that same 60-day period or the validation is deemed to occur.

The tension, if not outright conflict, between section 1092’s four-year statute of limitations and the validation statutes’ 60-day window is evident. [The First District Court of Appeal held](#) that the validation statutes do not apply to a government entity who is a party to the contract. Therefore, Monterey’s lawsuit was timely because it was filed within the four years statute of limitations provided for in section 1092. The court went on to find that the director clearly had a prohibited financial interest in the contracts and they were accordingly void.

Of greater significance to future section 1090 litigation is what the court had to say about the conflict between section 1092 and the validation statutes, even ignoring its express language exempting a public agency. The court suggested, without deciding, that the validation statutes’ 60-day window should not apply to any action under section 1090.

Why does this matter? Two reasons. First, any party to a contract made in violation of section 1090 may bring suit within four years to have it declared void. Thus, a private entity who is a party to a contract, like the private water company in this lawsuit, may bring an action under section 1092 seeking to have a contract declared void. However, only a public agency contracting party is exempt from the validation statute, and its 60-day window, by the express terms of the statute. So, if the validation statutes do not apply to a section 1090 lawsuit, the private entity may seek to sue outside the 60-day window. Second, and more significantly, some appellate courts have recognized that taxpayers or citizen taxpayer groups have standing to sue under section 1092 to have a contract declared void, and even to name the public entity as a defendant. Here again, if the short validation 60-day window does not apply, these parties may sue within four years and this will serve to foster and promote this type of litigation.

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