

September 1, 2000

CEC Advice No. 2000-09

Advice Provided to Mr. Stephen J. Kaufman
Smith Kaufman LLP

This letter is a response to your August 24, 2000, request for formal advice¹ on behalf of Councilmember Nick Pacheco, regarding whether his officeholder account may be used to pay for airfare to assist a constituent in financial need. Our advice is based on the facts provided in your letter and your conversation with Barbara Freeman on August 31, 2000.

QUESTIONS

1. May Councilmember Pacheco's officeholder committee expend funds to pay airfare for a constituent with financial need to accompany her daughter to school in Connecticut?
2. May officeholder committee funds be used to assist constituents with financial needs with "family matters" such as education or funeral costs? If yes, are such expenditures limited to \$100 per year per recipient?

RELEVANT FACTS

We have determined that the following facts are relevant to your inquiry:

1. Councilmember Pacheco has established and maintains an officeholder account in accordance with the City's Campaign Finance Ordinance (LAMC §49.7.12).

¹ Los Angeles Admin. Code §24.1.1(f)(2)(K) provides that formal written advice provides the requestor with immunity set forth in Los Angeles City Charter §705. This formal advice does not address or apply to any past actions by the requestor(s).

2. Councilmember Pacheco is aware of a constituent in financial need who wishes to accompany her daughter to school in Connecticut. In lieu of flowers or the like, the Councilman would like to express his congratulations for the constituent's daughter's accomplishment in more practical terms by using his officeholder account funds to make an expenditure in the amount of \$250 toward the cost of airfare.

In addition, your August 24 letter notes that the constituent is not a member of the Councilmember's family, a personal friend of the Councilmember or his family, nor a member of his staff. Further, the constituent is not a family member or friend of any member of the Councilmember's staff.

ANALYSIS AND CONCLUSION

As discussed below, Councilmember Pacheco may use officeholder account funds of up to \$100 to pay for a portion of a constituent's airfare.

The City of Los Angeles Campaign Finance Ordinance (LAMC §49.7 *et. seq.*) authorizes City Elected Officials to establish an officeholder expense fund to pay for expenses that relate to carrying out the duties associated with holding elective City office. The officeholder expense fund is to be used by officeholders for expenses related to communicating, assisting or serving constituents provided that the expenditure falls into at least one of the categories specifically enumerated in Los Angeles Municipal Code Section 49.7.12 A. If not expressly permitted, the expenditure may be allowed if, prior to making the payment, written advice issued by the City Ethics Commission concludes that the expenditure is similar to one of the detailed expenditure categories. (LAMC §49.7.12 A 2 (w)).

In your letter, you note that the payment of airfare for a constituent with financial hardship is similar to permissible officeholder expenditures allowed by the provision's subsections (i) and (q).

LAMC §49.7.12 A 2 (i) authorizes expenditures from officeholder account funds for "donations to tax-exempt educational institutions or tax-exempt charitable, civic or service organizations." The law, however, specifically requires the donation to be a payment of which a majority of the expenditure could be deducted as a charitable deduction for federal income tax purposes; and, must be made to an organization that is tax exempt under Internal Revenue Code Section 501(c)(3). Since the expenditure under consideration would be made to an individual rather than a tax-exempt organization, this subsection is not applicable under the circumstances you have described.

In the case of LAMC §49.7.12 A 2 (q), officeholder expenditures of up to \$100 per recipient per fiscal year are permitted for expressions of congratulations, appreciation or condolences sent to constituents with whom the officeholder communicates in his or

her official capacity. Such expressions are not required to be in a particular form or based on the financial need of the recipient. Paying a portion of the airfare to assist a constituent whose daughter is attending school across country as the Councilmember's expression of congratulations for the daughter's accomplishment is an expenditure allowed by subsection (q) provided that the expenditure does not exceed \$100. Therefore, he may use up to \$100 from his officeholder account for this purpose.

With respect to your second question, you ask whether officeholder account funds may be used to assist constituents in financial need with "family matters" such as "education or funeral costs." Formal advice is issued by the City Ethics Commission only when specific facts are presented by the requestor. Since your question is general in nature, we cannot address the question at this time. Please feel free, however, to request formal advice in the future should this situation arise.

Thank you for contacting the City Ethics Commission about this matter.

Attachment

APPLICABLE CITY LAW ATTACHMENT

SEC. 49.7.12. Officeholder Controlled Funds. (*Amended by Ord. No. 172,480, Eff. 4/10/99, Oper. 7/1/99.*)

A. Officeholder Expense Fund

1. Each elected City officer shall be permitted to establish and maintain one officeholder expense fund, subject to the provisions of this section.

2. An expenditure from the officeholder expense fund must be related to assisting, or serving, or communicating with constituents, or otherwise made in connection with the official duties of the elected City officer, provided, however that no expenditure may be made from an officeholder expense fund regulated by this section unless the expenditure falls into one or more of the following categories:

- (a) Expenditures for fundraising (including solicitations by mail) for the officeholder expense fund.
- (b) Expenditures for office equipment, office furnishings and office supplies.
- (c) Expenditures for office rent.
- (d) Expenditures for salaries of part-time or full-time staff employed by the officeholder expense fund committee.
- (e) Expenditures for consulting, research, polling, photograph, videotaping and similar services.
- (f) Expenditures for conferences, meetings, receptions, and events attended in the performance of governmental duties by (1) the officeholder, or (2) a member of the officeholder's staff. These expenditures may include fees for materials, registration or admission.
- (g) Expenditures for travel, including lodging, meals, and other related disbursements, incurred in the performance of governmental duties by the officeholder, a member of the officeholder's staff, or a member of such person's household accompanying the person on such travel.
- (h) Expenditures for meals during which the attendees conduct official City business.
- (i) Expenditures for donations to tax-exempt educational institutions or tax exempt charitable, civic or service organizations.

(1) For purposes of this paragraph, a "**donation**" is a payment of which a majority of the expenditure could be deducted as a charitable deduction for federal income tax purposes. A donation may be the purchase of tickets to a charitable event, provided that the majority of the ticket price would be a tax deductible, and that no substantial part of the proceeds from the event will personally benefit the elected officer, any member of his or her immediate family, or his or her officeholder expense committee, or the committee's treasurer.

- (2) An organization shall be considered tax exempt within the meaning of this paragraph only if it has received a federal tax exemption under Internal Revenue Code Section 501(c)(3).
- (j) Expenditures for memberships to civic or professional organizations, if such membership serves a governmental or legislative purpose.
 - (k) Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities.
 - (l) Expenditures for advertisements in program books, testimonials, souvenir books, or other publications if the advertisement does not support or oppose the nomination or election of a candidate for City office.
 - (m) Expenditures for mailings to persons within the City which provide information related to city-sponsored events, government services, the requirements of the law or an official's position on a particular matter on which the Council, Mayor or a City agency is acting or has recently acted.
 - (n) Contributions or expenditures to support or oppose candidates seeking election to an office other than an elective City office.
 - (o) Contributions or expenditures to support or oppose ballot measures.
 - (p) Contributions to a political party or committee, including the purchase of tickets to political events, where no substantial part of the proceeds will personally benefit the elected officer, any member of his or her immediate family or his or her committee treasurer.
 - (q) Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other individuals with whom the officeholder communicates in his or her official capacity. No more than \$100 per fiscal year may be expended per individual recipient acknowledged pursuant to this paragraph.
 - (r) Expenditures for conferences, meetings, receptions and events concerning City business or issues which are officially sponsored and hosted by the elected officer and his or her office. These expenditures may include site fees, advertising brochures, invitations, materials distributed to attendees, refreshments, equipment and services, and other incidental expenses.
 - (s) Expenditures for events such as meetings, luncheons and retreats attended primarily by the elected officer's staff in the conduct of official City business.
 - (t) Expenditures for social events held by the elected official to honor or thank members of his or her staff, or in connection with a holiday celebration, attended primarily by the elected officer's staff.
 - (u) Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions.
 - (v) Expenditures for accounting, professional, and administrative services provided to the officeholder expense fund.
 - (w) An expenditure similar to an expenditure detailed in Paragraphs (a) through (v), inclusive, if, prior to making the expenditure, the officeholder or the

officeholder expense fund has received written advice from the City Ethics Commission that the expenditure is permissible pursuant to this paragraph. The City Ethics Commission shall respond to requests for such approval no more than five working days from the date a request for formal advice has been received.