

August 1, 2001

CEC Advice No. 2001-10

Advice Provided to Mr. Paul R. Shockley

This letter is a response to your July 3, 2001, request for formal advice,¹ regarding the City's post-City service lobbying restrictions. Our advice is based on the facts provided in your letter.

QUESTION

How do the City's post-City service lobbying restrictions apply to you with respect to providing consulting services to a bidder of a Los Angeles Department of Water and Power (DWP) contract, given your previous employment with the DWP?

RELEVANT FACTS

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

1. You were employed as an engineer and as Director of Information Technology Services with the DWP until July 1, 1998, after over 26 years of service. While working in the power systems engineering area, you had various responsibilities relating to the Sylmar Converter Station. These include working with DWP engineering operations and maintenance staff at the original Sylmar Converter Station as Control and Protection Engineer and Assistant Superintendent of Engineering from 1973 to 1980. In 1980 and 1981, you were involved in writing specifications and evaluating the proposals for the Sylmar Upgrade project. In 1988, you assisted DWP staff on the Sylmar Expansion Project with troubleshooting problems that occurred during commissioning.
2. You were a "designated" City official (rather than a "high level" official) within the meaning of the Governmental Ethics Ordinance (LAMC § 49.5.1 *et seq.*).
3. The DWP prepared and advertised an RFP for replacement of the Sylmar Converter Station. The due date for the bid was on June 28, 2001. Under the RFP, DWP will

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).

contract for replacement of converter station equipment, including the equipment on which you previously worked. The new equipment will be installed in the existing Sylmar Expansion Project building, with facilities on the west side of the I-5 freeway abandoned and demolished under separate contracts. The required in-service date for the equipment is December 31, 2003.

4. Currently, you are considering providing consulting services to a bidder for the Sylmar Converter Station Replacement Project. Your proposed scope of work would include development of management systems and policies to assure contractor compliance with contract provisions related to project management, design review and approval, and contract change processes. The assistance will begin during DWP's proposal evaluation and contract award process and continue through the project if this bidder is successful. At times, you may participate in meetings with DWP personnel concerning the proposal evaluation and contract administration. You represent that you were not involved in discussions relating to this project while employed with DWP.

ANALYSIS AND CONCLUSION

To prevent former City officials, appointees and employees from exercising, or appearing to exercise, improper influence over City decision-making, City law establishes certain "revolving door" limits on their attempts to influence City decisions for compensation after they leave City service. There are two types of post-City service lobbying restrictions that apply to you, as described below: a one-year restriction² and a ban on influencing any matter that remains pending in which you had "personal and substantial involvement" during your tenure with the City of Los Angeles.

"Personal & Substantial" Participation Ban

City law permanently bans former City officials and employees who *personally and substantially* participated in a decision, proceeding, claim, contract, legislation or other specific matter during their tenure with the City from being paid to attempt to influence any City action on that matter, if it is still pending with any agency or if an agency is a party to or has a direct or substantial interest in the matter. In addition, former City officials or employees may not advise or assist others that are attempting to influence action on those matters. A City official "personally and substantially" participates in a matter by, for example, making a decision, making a recommendation, conducting research or rendering advice on a matter. (LAMC §§ 49.5.11 A, B).

² Because you left City service on July 1, 1998, this provision does not apply to you because the one-year period that applied to you ceased on July 1, 1999.

According to the facts you provided, you worked on matters relating to the existing Sylmar Converter station facilities. Your potential consulting services would concern the replacement of that equipment. You have advised us that you did not participate in decisions relating to that replacement while at DWP. Your proposed services, therefore, do not relate to a “specific matter” that is still “pending” and you are not prohibited from providing consulting services in relation to the Sylmar Converter Station Replacement Project.

Finally, we note that as a former City employee, you must be careful to not disclose any confidential information acquired in the course of your employment with the City for pecuniary or personal gain or advantage. (LAMC §49.5.3). We have also enclosed for your information a brochure that explains the requirements of the City’s lobbyist registration and reporting requirements should your activities in the future involve attempts to influence City officials. Please feel free to contact us if you have any questions or would additional information.

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

Attachment

APPLICABLE CITY LAW ATTACHMENT

LOS ANGELES MUNICIPAL CODE

SEC. 49.5.2. Definitions.

"**City Official**" means any elective City officer, member, officer, employee, commissioner or consultant of any agency required to adopt a conflict of interest code subject to City Council approval, and who is required to file statements of economic interests pursuant to the conflict of interest code of his or her agency.

SEC. 49.5.3. Confidential Information.

No current or former officer or employee of the City shall use or disclose to any other person for pecuniary gain or personal advantage or privilege, confidential information acquired by him or her in the course of his or her official duties.

SEC. 49.5.11. Lobbying Activities of Former Officials and Employees

A. No former City official or employee of any agency (as defined in Section 49.5.2) who personally and substantially participated in a decision, proceeding, claim, contract, legislation or other specific matter during his or her City service, shall, for compensation, attempt to influence any action on that specific matter on behalf of any person other than an agency. This prohibition applies only if the specific matter is still pending before an agency or if an agency is a party to or has a direct or substantial interest in the specific matter. For purposes of this provision, "personal and substantial" participation includes, but is not limited to, making or voting on a decision or making a recommendation, rendering advice, investigation or conducting research.

B. No former City official or agency employee shall, for compensation, knowingly counsel, or assist any other person other than an agency (as defined in Section 49.5.2) in connection with an appearance or communication in which the former official or employee is prohibited from engaging pursuant to Subsection A.

C. The prohibitions contained in Subsections A and B shall not apply:

1. To prevent a former City official or agency employee from making or providing a statement, based on the former official's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses.

2. To communications made solely for the purpose of furnishing information by a former City official or agency employee if the court or agency to which the communication is directed makes written findings that:

- (a) The former official or employee has outstanding and otherwise unavailable qualifications;
- (b) The former official or employee is acting with respect to a particular matter which requires such qualifications; and
- (c) The public interest would be served by the participation of the former official or employee.

3. With respect to appearances or communications in a proceeding in which a court or agency has issued a final order, decree, decision or judgment but has retained jurisdiction, if the agency of former employment gives its consent by determining that:

- (a) At least five years has elapsed since the termination of the former official's or employee's employment or term of office; and
- (b) the public interest would not be harmed.

D. For one year after leaving City service, no former elected City officer, member of the City Ethics Commission or other former high level official shall, for compensation, engage in direct communication with any agency for the purpose of attempting to influence any action or decision on any matter pending before an agency on behalf of any person other than an agency.

E. For one year after leaving City service, no former City official shall for a compensation, engage in direct communication with any agency in which he or she served during the twelve month period preceding his or her departure from City service, for the purpose of attempting to influence any action or decision on any matter pending before that agency on behalf of any person other than an agency. For purposes of this subsection, the agency of a City Council office employee means his or her former Council office and the Councilmember of that district.

F. For purposes of this section, a decision does not include any ministerial action. A ministerial action is one that does not require a City official or employee to exercise discretion concerning any outcome or course of action.

G. Upon the petition of any interested person or party, a court or the presiding or other officer, including but not limited to any hearing officer, in any judicial, quasijudicial or other proceeding, may, after notice and an opportunity for a hearing, exclude any person found to be in violation of this section from further participation, or from assisting or counseling any other participant, in the proceeding then pending before such court or presiding or other officer.

H. No provision contained in this section shall prevent any former City official from representing himself or herself, or any member of his or her immediate family, in their individual capacities, in connection with any matter pending before an agency.

I. This section shall not apply to the activities of any former City official or employee who is an elected or appointed officer or employee of any city, county, district, multi-jurisdictional, state or federal government agency, when that former City official or employee is solely representing that agency in his or her official capacity as an officer or employee of the agency.