

April 9, 2002

CEC Advice No. 2002-03

Advice Provided to Mr. Mario Marin

Re: Your Request for Advice Dated March 12, 2002

Dear Mr. Marin:

This letter is in response to your letter to the City Ethics Commission of March 12, 2002. In that letter you requested formal advice¹ regarding restrictions on your possible future employment as a Real Estate and Public Affairs Manager with Viacom Decaux LLC. This issue arises because of your involvement last year with that firm in your current position as Director of Los Angeles Opportunities for Procurement and Services (LA OPS) in the Mayor's Office of Economic Development. Your question and the Commission's response, based on the information you provided in your letter, email messages and conversations with Nora Pollock on March 14, 19, 20, and 28, 2002, are detailed below.

QUESTION

After leaving City service, may you represent Viacom Decaux LLC as a Real Estate and Public Affairs Manager, given your interaction with that firm in your present position with the City as Director of LA OPS?

¹ Los Angeles Admin. Code § 24.1.1(f)(2)(K) provides that formal written advice provides the requestor with the 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).

RELEVANT FACTS

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

1. Since December 2000, you have been working in the Mayor's Office of Economic Development as Director of Los Angeles Opportunities for Procurement and Services (LA OPS). You have filed Statements of Economic Interests pursuant to your agency's Conflict of Interest Code; you are not a "high-level" filer within the meaning of the City's Governmental Ethics Ordinance.
2. The mission of LA OPS is to enhance minority, women-owned and other business enterprises' (M/W/OBE's) participation in the City's procurement opportunities through a coordinated outreach service. LA OPS provides procurement opportunity information, business outreach and development services, access to capital services, and technical and business services referrals to M/W/OBEs competing for City contracts in order to connect large general contractors with smaller, often women and minority-owned, subcontractors. LA OPS also provides informational services to large-scale general contractors regarding outreach to M/W/OBE subcontractors.
3. As Director of LA OPS, your responsibilities include implementing the M/W/OBE subcontractor outreach program, providing procurement information for M/W/OBE firms who wish to compete for City contracts, and providing training to staff on subcontractor outreach. You assist general contractors in fulfilling the City's subcontractor outreach requirements by providing information on these requirements at pre-bid meetings and throughout the bidding process, as well as by providing general contractors with listings of M/W/OBE subcontractors from a directory maintained by LA OPS.
4. For construction-related contracts, the Department of Public Works' Office of Contract Compliance requires bidders on City contracts to take reasonable steps to ensure that all available business enterprises, including M/W/OBEs, have an equal opportunity to compete for and participate in subcontracting opportunities. The Office of Contract Compliance evaluates bidders using a set of indicators relating to efforts taken to outreach to M/W/OBEs. Your involvement with the Office of Contract Compliance's set of indicators is limited to providing information to bidders on M/W/OBE subcontractor outreach indicators. Neither you nor LA OPS participate in the evaluation of bidders or in decision-making in the awarding of contracts.
5. By your recollection, you met with Viacom Decaux LLC in February 2001 (then called "Infinity Decaux LLC") to provide information on their subcontractor outreach requirements. At that time, Infinity Decaux LLC was preparing to bid on a 20-year contract to install street furniture throughout the City. In March 2001, Infinity Decaux LLC contacted you to request a list of qualified M/W/OBE firms for subcontracting purposes. You provided a list from the LA OPS directory at that time, after which you had no further interaction with the firm. The Board of Public Works

approved a Notice to Proceed on the Street Furniture contract in June 2001, and the City Council approved that the Bureau of Street Services and Chief Legislative Analyst enter into negotiations with Infinity Decaux LLC on the contract in July 2001. On December 14, 2001, the City Council approved the terms of the Street Furniture contract with Infinity Decaux LLC, and recognized the new name of the firm as Viacom Decaux LLC.

6. You are considering applying for a position as a Business and Public Affairs Manager with Viacom Decaux LLC. No offer of employment has been made to you by the firm. The main function of the position is to identify locations for street furniture, educate City Council offices, community groups, civic organizations, neighborhoods, BIDs, and various City departments about these locations and issues relative to their placement, and gain approval from these groups for final placement of street furniture.

ANALYSIS & CONCLUSION

City law does not restrict with whom you may accept employment after leaving City service. To prevent former City officials, appointees and employees from exercising or appearing to exercise improper influence over City decision-making, however, City law establishes certain "revolving door" limits on the kinds of activities you may engage in for compensation on behalf of a new employer. Specifically, City law limits the ability of a former City official to influence certain City decisions for compensation after leaving City service. There are two types of post-City service lobbying restrictions: a one-year restriction against influencing decisions of your former agency 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.

Ban on Negotiating Future Employment

The Governmental Ethics Ordinance forbids a "City official" (as defined in LAMC § 49.5.2.) from directly or indirectly, knowingly or willfully negotiating the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee. (LAMC § 49.5.12.)

Based on the facts that you provided, Viacom Decaux LLC does not currently have a matter within the jurisdiction of your agency pending before you. Therefore, you are not prohibited from negotiating the possibility of future employment with that firm. In the event that matters involving Viacom Decaux LLC should come before you at the Mayor's Office while you are considering future employment with the firm, you should recuse yourself from those matters.

One-Year Lobbying Restriction

The Governmental Ethics Ordinance contains a one-year post-City service restriction that applies to individuals who were "City officials" within the meaning of the Ordinance during their City tenure. A "City official" is someone who is required to file financial disclosure forms (State Form 700) known as "Statements of Economic Interests." (LAMC § 49.5.2). Former City officials may not engage in compensated communications, either personally *or through an agent*, with his/her former City agency for the purpose of attempting to influence an action or decision on any matter pending before that agency on behalf of anyone (other than the agency) for one year after the date the official left City service (LAMC § 49.5.11 E).

The City's one-year post-City service lobbying restriction prohibits you, as a former City official, from communicating, for compensation, with the Office of the Mayor for the purpose of attempting to influence any City matter for one year after the date you leave City service. During that period, you could assist and advise others at your firm about such communications, provided that you are not advising about any matter in which you had "personal and substantial involvement" while you were a City official (see below). Moreover, you may not direct others to appear before the Office of the Mayor acting as *your* agent. For example, you could not advise a Viacom Decaux LLC colleague to represent himself or herself as an intermediary acting on your behalf when meeting with an official in the Mayor's office.

After the one-year post-City service lobbying restriction has concluded, you may lobby any City agency or official, including the Office of the Mayor, subject to the "personal and substantial participation" ban discussed below.

"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 attempting to influence, for compensation, any action on that matter if it is still pending with the City or if the City is a party to or has a direct or substantial interest in the matter. In addition, former City officials or employees may not, for compensation, 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).

You state that you provided information regarding the City's subcontractor outreach requirements at open, pre-bid meetings to Viacom Decaux LLC as well as information on qualified M/W/OBE firms. That information is available to any bidder on a City contract. You had no further interaction with Viacom Decaux LLC, nor did you provide any research, recommendation, or advice, or participate in a decision involving the Street Furniture project. Based on the information you provided, therefore, you did not have "personal and substantial" involvement in the Street Furniture contract. Consequently, you are not subject to the "personal and substantial" ban on activities related to this matter.

Please be advised, however, that the “personal and substantial” ban may apply to other matters if you are compensated to influence City decisions concerning specific matters in which you had personal and substantial involvement when you worked for LA OPS.

Finally, we note that as a former City employee, you must 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.

Thank you for contacting the City Ethics Commission about this matter. If you have any questions regarding this letter, please do not hesitate to contact Nora Pollock or me at (213) 978-1960.

Sincerely,

LeeAnn M. Pelham
Executive Director

Attachment

ATTACHMENT

Los Angeles Municipal Code (LAMC) § 49.5.2 Definitions, defines the following terms:

“Agency” means the City of Los Angeles or any department, bureau, office, board, commission, other agency of the City, or any other government agency, required to adopt a conflict of interest code subject to City Council approval.

“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.

"Direct Communication" means appearing as a witness before, talking to (either by telephone or in person), corresponding with (including sending electronic mail to), or answering questions or inquiries from, any City official or employee, either personally or through an agent.

LAMC § 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.

LAMC § 49.5.11 Lobbying Activities of Former Officials, in pertinent part, states:

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 subsection A and B shall not apply:

1. To prevent a former agency officer or employee from making or providing a statement, based on the former officer'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 agency officer or employee if the court or agency to which the communication is directed makes written findings that:

(a) the former officer or employee has outstanding and otherwise unavailable qualifications;

(b) The former officer 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 officer or employee.

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 compensation, engage in direct communication with any agency in which he or she served during the twelve month period preceding his or 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.

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 Subsections D or E of this section shall prevent any former City official from representing himself or herself, or any member of his or her immediately 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.

LAMC § 49.5.12 Future Employment of City Officials

A. No member of the City Council or member of any board, commission, committee or other such voting body of any agency who is required to file statements of economic interests pursuant to the California Political Reform Act, shall directly or indirectly, knowingly or willfully negotiate the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee or before any body of which he or she is a voting member.

B. No other City official shall, directly or indirectly, knowingly or willfully negotiate the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee.

C. No person who has a matter pending before a City official, or before any body of which the official is a voting member shall, directly or indirectly, knowingly or willfully negotiate the possibility of future employment of that City official.

D. No City official shall make, participate in making or use his or her official position to influence a decision involving the interests of a person with whom he or she has an agreement concerning future employment.